

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2000

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

AUTOMATIC RADIO MFG. CO., INC., and MERIT
INTERNATIONAL CORP.,

Plaintiffs-Appellants,

- against -

CROWN RADIO CORPORATION (JAPAN) and CROWN
RADIO CORPORATION (NEW YORK),

Defendants-Appellees.

*On Appeal from an Order from the United States District Court
— Southern District of New York*

APPENDIX

DANIEL ROSEN

Attorney for Plaintiffs-Appellants

30 Broad Street

New York, New York 10004

HA 2-8456

WHITMAN & RANSOM

Attorneys for Defendant-Appellee

Crown Radio Corporation (Japan)

522 Fifth Avenue

New York, New York 10036

867-1700

(7876)

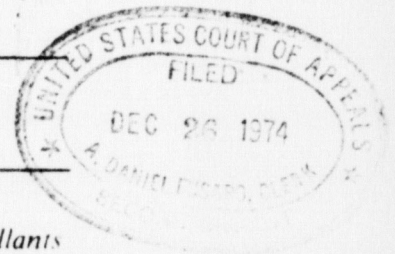
LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N. J.
(201) 257-6850

New York, N. Y.
(212) 565-6377

Philadelphia, Pa.
(215) 563-5587

Washington, D. C.
(202) 783-7288



3

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Appendix

	Page
Docket Entries (Filed July 19, 1974) . . .	1a
Notice of Motion Dated March 11, 1971 . .	6a
Affidavit of Kazunaka Uesugi in Support of Motion	8a
Affidavit of Ellis G. Rosen in Support of Motion	12a
Affidavit of David Housman in Opposition to Motion	14a
Affidavit of Frank M. Housman in Opposi- tion to Motion	18a
Affidavit of John S. DeMetrick in Op- position to Motion	20a
Affidavit of Daniel Rosen, in Opposition to Motion	22a
Complaint in Japanese (Filed November 15, 1972)	29a
Request for Documents	41a
Notice of Motion Filed December 10, 1973	44a

Contents

	Page
Affidavit of T. Uchiyama in Support of Motion	45a
Affidavit of Dugald Campbell Brown . . .	49a
Exhibits Annexed to Foregoing Affidavit:	
A — Summons and Complaint Dated March 17, 1971	53a
B — Decision	71a
C — Order and Judgment	84a
D — Summons and Complaint Dated November 15, 1972	87a
Affidavit of David Housman in Opposition to Motion (Filed May 10, 1974)	100a
Affidavit of John S. DeMetrick in Opposition to Motion	110a
Affidavit of Frank M. Housman in Opposition to Motion	111a
Affidavit of Daniel Rosen in Opposition to Motion	112a
Exhibits Annexed to Foregoing Affidavit:	
1 — Complaint (Printed at 87a) . . .	120a

Contents

	Page
2 — Letter from Crown Radio (Japan) to David Housman Dated July 7, 1969	121a
3 — Letter from Crown Radio (Japan) to David Housman Dated December 3, 1969	122a
4 — Letter from Crown Radio (Japan) to David Housman Dated October 5, 1970	123a
5 — Letter from Crown Radio (Japan) to Elliot J. Englander Dated October 13, 1970	124a
6 — Purchase Order Dated May 15, 1969 .	125a
7 — Purchase Order Dated May 8, 1969 . .	126a
8 — Page from Manhattan Telephone Di- rectory 1972	127a
9 — Page from Manhattan Telephone Di- rectory 1973	128a
10 — Cover Page of Crown Brochure . .	129a
11 — Copy of Article in Audio Times . .	130a
Reply Affidavit of Dugald Campbell Brown (Filed May 15, 1974)	132a

Contents

	Page
Endorsement of Robert L. Carter, U.S. D.J. (Filed July 2, 1974)	135a
Notice of Entry of Endorsement	137a
Notice of Appeal (Filed July 19, 1974) . . .	138a

DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.

-v-

CROWN RADIO CORPORATION (JAPAN) and
CROWN RADIO CORPORATION (NEW YORK)

For plaintiff:
DANIEL ROSEN
30 Broad Street
NYC 10004 Tel: Ha 2-8456

For defendant:
Whitman & Ramson
522 Fifth Ave, NYC 10036
867-1700

Judge Carter
72 Civ. 4864

DATE	PROCEEDINGS
Nov.-15-72	Filed Complaint and issued summons.
Dec.-20-72	Filed Summons and Entered marshal's return served on Crown Radio Corp. N.Y. by H. R. Altus on 12-11-72
Jan.-4-73	Filed Stip and Order. Ordered that the deft Crown Radio Corp (NY)'s time to answer is extended to 1-26-73. CARTER, J.

Docket Entries

Jan.-26-73 Filed Stip and Order that the deft's time to answer is extended to 2-26-73. CARTER, J.

Mar.-5-73 Filed Stip and Order that the deft's time to answer with respect to pltffs complaint is extended to 3-26-73. CARTER, J.

Apr.-6-73 Filed Deft's Stip & Order extending time to answer to 4-26-73 re:complaint. CARTER, J.

May 4-73 Filed Deft's Stip & Order extending time re:complaint to 5-28-73. CARTER, J.

June 4-73 Filed Stipulation and Order extending time for Deft Crown Radio Corp to answer pltffs complaint to 6-12-73. CARTER, J.

June 14-73 Filed ANSWER of deft Crown Radio Corp to the complaint.

Aug.-7-73 Filed stip. and order that deft. Crown Radio Corp. time to serve an amended answer to pltfs. complaint is ext. 30 days after written notice is read from the atty. for pltfs. that such amended answer must be served. So ordered, CARTER, J.

Docket Entries

Aug.-17-73 Filed certificate of mailing to Ministry of Foreign Affairs, 1-1 Kasumigaseki Chiyoda-Ku, Tokyo Japan (#455735), Clerk.

Nov.-29-73 Filed stip. and order that the time for deft. Crown Radio Corp. to answer complaint is ext. to Dec-10-73 - CARTER, J.

Dec.-7-73 Received from Notai Consulate General of Japan, 235 East 42nd St., NYC with certified mail #750137 Copy of Summons and complaint together with translation of same (no return) - Filed and placed in folder.

Dec.-10-73 Filed affdvt. and defts. (Crown Radio Corp. (Japan)) notice of motion to dismiss - ret. 12-28-73 at 10 AM.

Dec.-12-73 Filed defendants (Crown Radio Corp. - Japan) memorandum in support of motion to dismiss.

Dec.-28-73 Filed stip. and order adj. motion by deft. Crown Radio Corp. (Japan) to dismiss to Feb-18-74 and that pltff's shall deliver any opposing papers to counsel for said

Docket Entries

deft. before Feb-13-74. CARTER, J.

Feb.-1-74 Filed ENDORSEMENT. The motion is granted and the complaint is dismissed for reasons indicated. So ordered. CARTER, J. m/n

Feb.-6-74 Filed ENDORSEMENT. The endorsement dated January 31, 1974 (filed on 2-1-74) is hereby withdrawn. So ordered - CARTER, J. m/n

Feb.-13-74 Filed stip. and order adj. motion of deft/Crown Radio to 3-18-74 and that pltf. shall deliver any opposing papers to counsel for the deft's on or before 3-13-74. CARTER, J.

May 10-74 Filed plaintiffs (Automatic Radio Mfg. Co.) affdvt. of David Houseman in opposition to motion of deft. Crown (Japan) to dismiss under Rule 12(b)2.

May 10-74 Filed plaintiffs memorandum of law in opposition to deft. Crown (Japan's) motion to dismiss under Rule 12(b)2.

Docket Entries

May 15-74 Filed def't's reply affdvt. of Douglas Campbell Brown re motion to dismiss

May 15-74 Filed defendants reply memorandum of law re motion to dismiss.

Feb.-7-74 Filed memo endorsed on motion filed 12-12-73; motion withdrawn pursuant to stip. by counsel is granted. CARTER, J.

Jul.-2-74 Filed ENDORSEMENT that the endorsement of January 31, 1974, is hereby withdrawn. So ordered - CARTER, J. (withdrawn memo end. Filed on 2-1-74 both ENDORSEMENTS ATTACHED TOGETHER.)

Jul.-2-74 Filed stip. and order adj. motion to dismiss by Crown Radio Corp. (Japan) to April 12, 1974 - CARTER, J.

Jul.-19-74 Filed pltf's notice of appeal to the USCA for the 2nd Circuit from order of July 2, 1974 dismissing the complaint against Crown Radio Corp. (Japan) - copy mailed to Whitman & Ransom Esqs.

A TRUE COPY
RAYMOND F. BURGHARDT, CLERK
s/ E.A. Becker, Deputy Clerk

NOTICE OF MOTION DATED MARCH 11, 1971 RECEIVED
UNITED STATES DISTRICT COURT

6a

MAR 15 1971

OFF: DANIEL ROSEN

SOUTHERN DISTRICT OF NEW YORK

AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION,

Defendant.

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavits of Kazunaka Uesugi, sworn to the day of March, 1971, and Ellis G. Rosen, sworn to the 11th day of March, 1971, the undersigned attorneys for defendant will move this Court at a Motion Term thereof to be held in Room 506 at the United States Courthouse for the Southern District of New York, located at Foley Square, New York, New York, on the 30th day of March, 1971 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(2) and (5) of the Federal Rules of Civil Procedure dismissing the above entitled action upon the grounds that this Court lacks jurisdiction over the person of the defendant and that service of process was insufficient.

Dated: New York, New York
March 11, 1971

Yours, etc.

WHITMAN & RANSOM

By (SGD.) DUGALD CAMPBELL BROTH

A Member of the Firm
Attorneys for Defendant
Office & P.O. Address
522 Fifth Avenue
New York, N.Y. 10036

TO:

DANIEL ROSEN, ESQ.
Attorney for Plaintiffs
Office & P.O. Address
30 Broad Street
New York, N.Y. 10004

CLERK
United States District Court
Southern District of New York

8a

AFFIDAVIT OF KAZUNAKA UESUGI IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

AUTOMATIC RADIO MFG. CO., INC. and	:	
MERIT INTERNATIONAL CORP.,	:	
	:	
Plaintiffs,	:	AFFIDAVIT
	:	
-against-	:	71 CIV. 267
	:	
CROWN RADIO CORPORATION,	:	
	:	
Defendant.	:	
	:	
-----	:	
	x	

STATE OF CALIFORNIA)
 : ss.:
COUNTY OF)

KAZUNAKA UESUGI, being duly sworn, deposes and says:

1. I am the Vice-President and Treasurer of Crown Radio Corporation (hereinafter "Crown San Francisco"), a corporation duly organized and existing under and by virtue of the laws of the State of New York having its present base of operations in San Francisco, California. I am familiar with the facts and matters involved in the making of this motion. I make this affidavit in support of the motion of defendant Crown Kabushiki Kaisha (hereinafter "KK"), sued herein as Crown Radio Corporation, to dismiss the above entitled action pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the ground that this Court lacks jurisdiction over the person of said defendant.

2. This action for an alleged breach of contract was purportedly commenced by leaving a copy of the summons and complaint with Mr. Ellis G. Rosen, president of Ellis G. Rosen, Ltd.

9a

an independent manufacturers representative who is not an employee of Crown San Francisco.

3. Crown San Francisco was incorporated in April, 1961, and maintained its principal office at that time at 200 West 57th Street, New York, New York. Shortly thereafter, it moved its office to 150 Fifth Avenue, New York, New York. In or about August, 1968, approximately two and one-half years ago, Crown San Francisco vacated its New York office and moved to its present principal place of business, San Francisco, California. Therefore, since August, 1968, Crown San Francisco has not conducted business activities in New York and maintains no business facilities there.

4. Crown San Francisco's only connection with the State of New York at the time plaintiff's alleged cause of action arose and at the present time is that solicitations of sales are made by two sales representatives who are compensated on a commission basis only. These representatives operate out of New York City and Buffalo, New York. Furthermore, upon information and belief, these sales representatives are not exclusively Crown San Francisco representatives. Rather, they also represent other firms and corporations in connection with the sale of products and no control is exercised over them by Crown San Francisco. All orders solicited by the sales representatives are subject to acceptance by Crown in California and the commissions paid to these representatives are paid by Crown San Francisco.

5. To the best of my knowledge, KK, the defendant herein, has never done business in New York, and is not licensed

10a

or authorized to do so. It does not maintain and never has maintained any office, place of business, telephone listing, mailing address, bank account, warehouse or inventory in New York and no officers, directors or employees of KK are domiciled or residing in New York. In addition, it does not own or lease any real property in New York and does not advertise its products in that state.

6. Crown San Francisco operates solely in the United States while KK operates solely in Japan. KK owns approximately 75% of the outstanding stock of Crown San Francisco but Crown San Francisco operates as an independent corporation under the supervision and control of its own officers and directors. Two of the three directors and four of the six officers of Crown San Francisco have no connection with KK. In addition, Crown San Francisco maintains its own books and records, its financial reports are prepared by its own independent accountants and the financial records of Crown San Francisco are not reported on a consolidated basis with the operations of KK.

7. Although Crown San Francisco purchases and sells only products manufactured by KK, KK also manufactures similar products for other companies under other brand names, which products are sold in competition with products sold by Crown San Francisco. It should also be pointed out that KK's method of marketing its products for eventual use in the United States is to sell its products in Japan to other Japanese or American corporations which make their own arrangements for the importation of these products into this country. Once KK has sold its products in Japan, it plays no further role in the distribution process and does not warrant or guaranty products purchased in Japan destined for resale in this country.

8. All promotional and advertising materials for Crown

San Francisco are prepared in the United States and are paid for by Crown San Francisco.

9. In view of the foregoing, I respectfully submit that Ellis G. Rosen is not an agent for Crown San Francisco and Crown San Francisco is not an agent for KK so as to render KK subject to the jurisdiction of this Court.

WHEREFORE, I respectfully request that defendant's motion to dismiss this action be granted in all respects.

KAZUNAKA UESUGI

Sworn to before me this

day of , 1971

AFFIDAVIT OF ELLIS G. ROSEN IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12a

----- x

AUTOMATIC RADIO MFG. CO., INC. and	:	
MERIT INTERNATIONAL CORP.,	:	
	:	
Plaintiffs,	:	AFFIDAVIT
	:	
-against-	:	71 CIV. 267
	:	
CROWN RADIO CORPORATION,	:	
	:	
Defendant.	:	
	:	
-----	:	
	x	

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ELLIS G. ROSEN, being duly sworn, deposes and says:

1. I am the president of Ellis G. Rosen, Ltd., a corporation duly organized and existing under and by virtue of the laws of the State of New York, maintaining its principal office for the transaction of business at 147 West 46th Street, New York, New York. My son and I are the sole stockholders of the Corporation. I make this affidavit in connection with the motion of defendant Crown Kabushiki Kaisha, sued herein as Crown Radio Corporation, to dismiss the above entitled action.

2. My firm acts as a manufacturers representative for several firms in the New York area, including James B. Lansing Co., a hifidelity speakers and components manufacturer, Bright Co., a manufacturer of environmental lighting and Crown Radio Corporation, a California based corporation, not the defendant herein, (hereinafter "Crown San Francisco").

3. My sole activity and function is to solicit orders for Crown San Francisco from distributors and department stores in New York City and northern New Jersey and to transmit those orders to Crown's San Francisco office. Upon acceptance of the orders in California, the goods are sent directly to the distributors or department stores in New York and I receive a commission on the sale of those goods.

4. On or about the 5th day of February, 1971, a copy of the summons and complaint in this action was left with me, notwithstanding the fact that I advised the process server that I was not authorized to accept service on behalf of the defendant herein. He replied that I was the only person in New York with whom he could leave the summons and complaint. I, therefore, mailed the summons and complaint to Crown San Francisco.

5. I am not presently and have never been an employee of the defendant or Crown San Francisco.

6. Neither the defendant nor Crown San Francisco bears any of the expenses incurred by me in connection with the maintenance of my office. I have no authority to bind either the defendant or Crown San Francisco by contract. Neither the name Crown Radio Corporation nor any similar name appears on the door of my office or on the building directory located on the ground floor of 147 West 46th Street.

Ellis G. Rosen

ELLIS G. ROSEN

Sworn to before me this

11th day of March, 1971

Neil J. [illegible]

SOUTHERN DISTRICT OF NEW YORK

----- x
AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION,

Defendant.
----- x

:
:
: 71 CIV. 267
: AFFIDAVIT
:

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, April 13, 1971

DAVID HOUSMAN, being duly sworn, deposes and
says:

1. I am Chairman of the Board of Directors of Automatic Radio Mfg. Co., Inc. and am fully familiar with all of the transactions had between Automatic Radio Mfg. Co., Inc., Merit International Corp., and Crown Radio Corporation and respectfully submit this Affidavit in opposition to the motion of the defendant for an order dismissing the above-entitled action upon the grounds that this Court lacks jurisdiction over the person of the defendant and that service of process was insufficient.

2. As appears from the Complaint in this action, a copy of which is annexed hereto and designated as Exhibit "a", the negotiations between the plaintiffs and the defendant commenced in or about the early part of 1969 and resulted in a course of dealing between the plaintiffs and defendant up to and including May of 1970.

3. At all of the times between the aforesaid date in 1969 and May of 1970, your deponent was informed by the President of the defendant corporation that it maintained an office in New York for the conduct of its business, and that if the plaintiffs had any difficulty in connection with shipments, delivery of merchandise, or servicing of said merchandise, plaintiffs should contact the New York office of the defendant.

4. As late as April of May of 1970, these instructions were again repeated to your deponent by the defendant and your deponent was advised that the office of the defendant corporation in New York City was located at 147 West 46th Street in the Borough of Manhattan, City, County, and State of New York. Further, your deponent was informed by the defendant corporation that Mr. Ellis G. Rosen was the person in charge of the management of the New York office of the defendant and was fully empowered and had the necessary authority to act for the defendant in any and all matters pertaining to the transactions had between the plaintiffs and the defendant with the exception of technical engineering problems, which would have to be taken up with the engineering division of the defendant corporation located in Japan.

5. The fact of the matter is that on one occasion in February of 1971, your deponent placed a call to Crown Radio Corporation at 147 West 46th Street, New York, New York, telephone number: 586-0590. The telephone was answered by a gentleman who announced "Crown Radio Corporation." The telephone call was a person-to-person call to Mr. Ellis Rosen, but on being informed that Mr. Rosen was not in at that time, the telephone call was then cancelled.

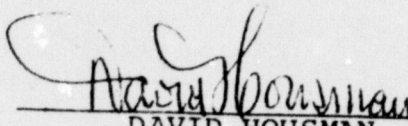
Mr. N. Miyabayashi, who is Section 1 Chief Foreign Trade Department of Crown Radio, phoned your deponent from his San Francisco office and advised that he would be in his New York office the latter part of that week, and asked me to phone him; which I did for the purpose of arranging a meeting in Boston. This meeting was to discuss the problem Crown created by breach of their agreements, and Mr. Miyabayashi made me promises to solve the problems and save Automatic Radio harmless; however, his undertakings were never complied with.

7. Annexed hereto and designated as Exhibits "b", "b1" and "b2" respectively are the letterheads of the defendant corporation clearly indicating on the bottom of the page that it maintains an office in New York and that such office was not only maintained in 1969 but in the year 1970 as well.

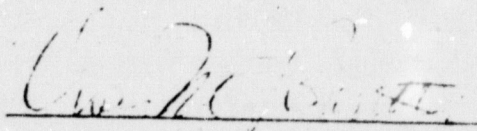
8. In addition to the foregoing, there is annexed hereto and designated as Exhibit "c", a duplicate of page 309 of the Manhattan Telephone Directory for the period 1970-1971, and which directory was published by the New York Telephone Company in the latter part of 1970, with corrections up to and including May 14, 1970 with the listing therein contained, "CROWN RADIO CORP., 147 W. 46 - - - - 586-0590."

9. It is respectfully submitted that the defendant, Crown Radio Corporation, was properly served with process herein since a copy of the Summons and Complaint was personally delivered by the United States Marshal for the Southern District to Ellis G. Rosen, the person represented by the defendant corporation to be the managing agent, and authorized and empowered representative of the defendant corporation to act on its behalf for the conduct of its business with the plaintiffs as hereinbefore set forth.

WHEREFORE, it is respectfully requested that the
defendant's motion be denied in its entirety.


DAVID HOUSMAN

SWORN TO BEFORE ME, THIS
13th DAY OF APRIL, 1971



SOUTHERN DISTRICT OF NEW YORK

- - - - - x

AUTOMATIC RADIO MFG. CO., INC. and :
MERIT INTERNATIONAL CORP., :

Plaintiffs, :

-against-

: 71 CIV. 267

CROWN RADIO CORPORATION, :
Defendant. :

AFFIDAVIT

- - - - - x

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, April 13, 1971

FRANK M. HOUSMAN, being duly sworn, deposes
and says:

1. I am the President of Merit International Corp., one of the plaintiffs in the above-entitled action, and respectfully submit this Affidavit in opposition to the motion of the defendant and in support of the Affidavit of Mr. David Housman.

2. Your deponent as President of Merit International Corp., the purchasing agent for Automatic Radio Mfg. Co., Inc., also had numerous occasions to deal with the defendant, Crown Radio Corporation. I have read the foregoing Affidavit of Mr. David Housman and know of my own knowledge that the facts set forth therein are true in every detail and that the representations made to the plaintiff, Automatic Radio Mfg. Co., Inc., as to the New York office of Crown Radio Corporation were similarly made to me. I am, therefore, sub-

19a

mitting this Affidavit in corroboration of the Affidavit of Mr. David Housman and in support of the contention of the plaintiffs that the service of the Summons and Complaint in this action upon Mr. Ellis G. Rosen at the office of Crown Radio Corporation at 147 West 46th Street, Borough of Manhattan, City and State of New York, was proper in all respects.

WHEREFORE, I request that the defendant's motion be denied in its entirety.

Frank M. Housman
FRANK M. HOUSMAN

SWORN TO BEFORE ME, THIS

13th DAY OF APRIL, 1971

Notary Public

AFFIDAVIT OF JOHN S. DE METRICK IN OPPOSITION TO MOTION 20a
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs, :

-against- :

71 CIV. 267

CROWN RADIO CORPORATION,

Defendant. :

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, April 13, 1971

JOHN S. DeMETRICK, being duly sworn, deposes
and says:

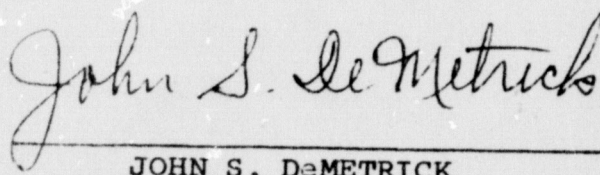
1. I am the chief engineer for each of the
plaintiff corporations in the above-entitled action and
respectfully submit this Affidavit in opposition to the motion
of the defendant and in further support of the contention by
the plaintiffs that service upon Crown Radio Corporation in
New York City was proper.

2. I was personally informed on a number of visits
made to Tokyo at the plant of Crown Radio Corporation that
if there was any difficulty in connection with the problem
of servicing the merchandise acquired from the defendant, I
was to contact Mr. Ellis G. Rosen, the authorized representa-
tive of the defendant corporation, empowered to act on behalf
of the defendant corporation with respect to any problems of
service effecting such merchandise purchased from the defendant
corporation.

indicated that Mr. Rosen had complete authority to represent the defendant corporation and for me not to hesitate to contact him with any problem, except such problems that might require technical engineering skill, in which case I was to deal directly with the engineering division of the defendant corporation in Japan. The defendant corporation further advised me that in all other respects, Mr. Rosen had complete authority to act for the defendant corporation.

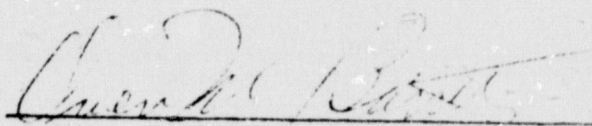
4. I have read the foregoing Affidavits of Messrs. David and Frank Housman and know of my own knowledge that the facts set forth therein are true in every detail since not only was I present when the aforesaid information was given to David Housman and Frank Housman, but directly communicated to me by the President of Crown Radio Corporation.

WHEREFORE, I request that the defendant's motion be denied in its entirety.


JOHN S. DeMETRICK

SWORN TO BEFORE ME, THIS

13th DAY OF APRIL, 1971


Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
AUTOMATIC RADIO MFG. CO., INC., and
MERIT INTERNATIONAL CORP.,Civil Action No.
71 Civ 267

Plaintiffs,

against

AFFIDAVIT

CROWN RADIO CORPORATION,

Defendant.
-----X

STATE OF NEW YORK, COUNTY OF NEW YORK.

DANIEL ROSEN, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs in the above entitled action and respectfully submit this affidavit in opposition to the motion of the defendant to dismiss the above entitled action on the ground that this Court lacks jurisdiction over the person of said defendant and that service of process was insufficient.

2. At the very outset, I wish to state to this Court that the attorneys for the defendant and Mr. Kazunaka Uesugi the alleged Vice President and Treasurer of Crown Radio Corporation the defendant herein, have attempted to confuse and obscure the simple issues raised by defendant's motion by changing the names (to suit its purposes) from Crown Radio Corporation to Crown San Francisco and Crown Kabushiki Kaisha which is referred to by the defendant as Crown K K. It is respectfully submitted that this artful camouflage is easily pierced by an examination of the facts.

3. As appears from the complaint in this action, (Exhibit "A"), the plaintiffs herein entered into negotiations and ultimately into an agreement with a corporation known as Crown Radio Corporation. Exhibits "B", "B 1" and "B 2" annexed to the affidavit of David Housman clearly indicate the name of

the corporation with whom the plaintiffs did business in Japan to be Crown ^{23a}
Radio Corporation. Furthermore, the letterhead indicates overseas offices
for said Crown Radio Corporation to be located in New York, San Francisco,
Panama, Colon, Dusseldorf and London. This same letterhead indicates that
the said Crown Radio Corporation are the manufacturers.

However, the defendant and its attorneys would have this Court believe
that the corporation in Japan is not Crown Radio Corporation but a corporation
known as Crown Kabushiki Kaisha which they refer to as Crown K K. This en-
tire contention by the defendant is completely without merit as is evidenced not
only by Exhibits " B ", " B 1 " and " B 2 " but by Exhibit " D " which is a letter
emanating from Tokyo, Japan on the letterhead of Crown Radio Corporation
and signed on behalf of said defendant by Shigeharu Sakuma, President. Further
all of the brochures and catalogues issued by Crown Radio Corporation and
printed in Japan indicate "Crown Radio Corporation " to be the name of the
corporation with whom the plaintiffs did business in Japan, and further indicate
that the said Crown Radio Corporation maintains offices in the Cities herein-
before enumerated. The particular attention of this Court is respectfully
called to the fact that New York is listed as one of the addresses. Added to the
foregoing, is the fact that all payments made by the plaintiffs for merchandise
purchased and delivered from Crown Radio Corporation in Japan were made
payable to Crown Radio Corporation.

4. The defendant would have this Court believe in its moving papers that
there is no connection between Crown Radio Corporation in Japan and the office
in New York, making it appear as if there were no relationship between the
New York office and Crown Radio Corporation. The defendant has further
attempted to mislead this Court into believing that the corporation in Japan is

Crown Kabushiki Kaisha, that there is another corporation known as Crown San Francisco, and that there is no Crown Radio Corporation having an office in Japan or known by that name in Japan or having an office under that name in New York. None of these allegations or contentions by the defendant have any merit whatsoever. The corporation in Japan (see Exhibits " B ", " B 1 " " B 2 " and " D ") is Crown Radio Corporation by their own admission and the printed material, published and circulated by that corporation substantiates such fact.

5. The defendant also contends in the affidavit of Kazunaka Uesugi in support of said motion, that Crown Radio Corporation does not maintain and never has maintained any office, place of business, telephone listing, mailing address, or the like, in New York and that no officers, directors or employees of Crown Radio Corporation are domiciled or residing in New York. In answer to these contentions, your deponent wishes to state that it has never been necessary for an officer, director or employee of a corporation to be a resident in New York in order to be amenable to process or necessary where such process names as the defendant a corporation and not the said individual. In the instant action, the falsity of the statements made on lines " 24 " through " 30 " of Page " 2 " of the affidavit of Mr. Uesugi is clearly evidenced by the fact that although he swears under oath that there is no telephone listing for Crown Radio Corporation, Exhibit " C ", annexed to the affidavit of David Housman in opposition to the motion clearly shows that the last published telephone directory of the New York Telephone Company, covering the period into 1971, lists Crown Radio Corporation at 147 West 46th Street, New York, New York, telephone number 586-0950 for the New York office of Crown Radio Corporation. Mail addressed to Crown Radio Corporation at said address is delivered and

not returned by the post office. Furthermore, that office acknowledges that it receives mail for Crown Radio Corporation.

6. The summons and complaint in this action was served upon the defendant at 147 West 46th Street as indicated by the return filed by the United States Marshal's office, and such process, by the admission of Ellis G. Rosen in his affidavit in support of defendant's motion indicates in paragraph " 4 " of said affidavit as follows:

" I, therefore, mailed the
summons and complaint to
Crown San Francisco."

7. The very fact that Mr. Ellis G. Rosen sent the summons and complaint to Crown Radio Corporation in San Francisco clearly indicates two defects in the argument advanced by the defendant in support of the motion. Firstly, since Crown Radio Corporation as designated in the complaint referred to the corporation in Japan it seems somewhat strange that Mr. Rosen should send the summons and complaint to Crown Radio Corporation in San Francisco, a corporation that defendant defines as having no relationship with Crown Radio Corporation of Japan. If there were no connection and it were not one and the same corporation, why would Mr. Ellis G. Rosen, who says he sells merchandise for Crown Radio Corporation of Japan and Crown Radio Corporation of San Francisco send the summons and complaint to San Francisco. Secondly, the Federal Courts have laid great stress upon the fact that the important part of proper service of process is to make sure that the defendant named therein has actual notice of the commencement of the action, the basis of the action and all other pertinent facts necessary to enable such defendant to defend such action within the proper time. In the present action, all of the parties concerned have had actual knowledge with respect to the summons and complaint and the commencement of said action.

8. On three occasions your deponent personally telephoned the number listed in the New York Telephone directory for Crown Radio Corporation and each time the telephone was answered at the other end by an individual who answered " Crown Radio Corporation". These calls were made by your deponent the first week in January, 1971, and twice during the second week in January, 1971. On the last call, your deponent spoke with Mr. Rosen who said that it was the office of Crown Radio Corporation and that he was the person in charge of the New York office of Crown Radio Corporation.

9. Significantly, no where in the supporting documents of the instant motion does the defendant deny that it is selling merchandise in New York and in fact in the very jurisdictional area of this Court. The fact of the matter is that merchandise is being sold by the defendant Crown Radio Corporation in this state.

10. It is respectfully submitted that pursuant to Rule 4 (d) (3) of the Federal Rules of Civil Procedure a copy of the summons and complaint in this action was delivered by the United States Marshal for the Southern District to Ellis G. Rosen who is a managing or general agent of the defendant Crown Radio Corporation and accordingly service of process was properly made upon the defendant Crown Radio Corporation and consequently this Court has jurisdiction over the defendant named in this action. Not only did Mr. Ellis G. Rosen state to your deponent that he was the manager of the New York office of Crown Radio Corporation, but as appears from the foregoing affidavits of Messrs. David Housman, Frank Housman and John S. DeMetrick, the defendant Crown Radio Corporation notified the plaintiffs that Mr. Ellis G. Rosen was the managing agent in charge of the New York office of Crown Radio Corporation. This fact coupled with the exhibits indicating the New York

27a

office is ample and conclusive evidence that Ellis G. Roser was the proper person upon whom service of process could be made against the defendant corporation.

11. An examination of the affidavit of Mr. David Housman, further indicates that the defendant maintained an office in New York City by the fact that Mr. Housman states in said affidavit that in the latter part of June, 1970, Mr. N. Miyabayashi, who is the Section 1 Chief Foreign Trade Department of Crown Radio Corporation in Japan, phoned Mr. Housman from the San Francisco office of said corporation and informed Mr. Housman that Mr. Miyabayashi would be in the New York office of Crown Radio Corporation, the defendant herein, in the latter part of that week, and requested Mr. Housman to phone him at the New York office of Crown Radio Corporation (Japan). Mr. Housman further attests in said affidavit that the telephone call was placed to the New York office of the defendant and a meeting was arranged with Mr. Miyabayashi for Boston. The telephone number at which Mr. Housman reached Mr. Miyabayashi was 586-0590, the same number designated in the New York telephone directory as the telephone number of the defendant.

12. As appears from the complaint in this action, the damages to the plaintiffs have been most severe and result from the most gross misconduct and unethical practices on the part of the defendant, and said defendant now seeks to evade its liability under the law and promote a miscarriage of justice by attempting to delude this Court into believing that the existing defendant corporation is not Crown Radio Corporation but some other corporation known as Crown Kabushiki Kaisha and that the New York office is in fact a corporation known as Crown San Francisco.

285

WHEREFORE, in view of the foregoing, it is respectfully requested that
the motion of the defendant in all respects be denied.

/s/ DANIEL ROSEN
DANIEL ROSEN

Sworn to before me this
14th day of April, 1971.

MARVIN R. JAVITZ
Notary Public State of New York
No. 24-1960525
Qualified in Kings County
Commission Expires March 30, 1973

召喚状

(FILED NOVEMBER 15, 1972)

合衆国=ニューヨーク州南部地区連邦地方裁判所
民事72 Civ. 41864号事件

原告 AUTOMATIC RADIO MFG. CO. INC.
同 MERIT INTERNATIONAL CORP

被告 CROWN RADIO CORPORATION (JAPAN)
同 CROWN RADIO CORPORATION (NEW YORK)

上記被告に対し以下の通り召喚状を発する。

被告は本状により当裁判所に召喚されるものであつて、本召喚状とともに被告に送達される訴状に対する答弁書を、本召喚状の送達の日から30日以内(送達の日は算入しない)に、下記原告訴訟代理人に送達しなければならぬ。もし被告においてこれをしない場合には、同訴状中に申立てられた救済を認容する缺席判決が被告に対して発せられることになるものである。

記

原告訴訟代理人弁護士 ダニエル・ローゼン

住所 ニューヨーク州 ニューヨーク市7"ロード通り30番地
(郵便番号10004)

裁判所書記官 ジョン・リビングストン(署名)

裁判所書記官補 B. A. バッカー(署名)

1972年11月15日

注) この召喚状は連邦地方裁判所民事訴訟規則オ4条に基づき発せられたものである。

合衆国ニューヨーク州南部地区連邦地方裁判所
民事72 Civ 4864号

原告 AUTOMATIC RADIO MFG. CO., INC.
同 MERIT INTERNATIONAL CORP.
被告 CROWN RADIO CORPORATION(JAPAN)
同 CROWN RADIO CORPORATION(NEW YORK)

AUTOMATIC RADIO MFG. CO., INC. および MERIT INTERNATIONAL CORP は、原告ら訴訟代理人弁護士 DANIEL ROSEN により、被告 CROWN RADIO CORPORATION(JAPAN) および CROWN RADIO CORPORATION(NEW YORK) に対し、以下の通り訴訟を提起する。

当事者および管轄権

1、ここに記述されるあらゆる時点において AUTOMATIC RADIO MFG. CO., INC. (以下「オートマティック社」という) はマサチューセッツ州法に基づき設立され存在している株式会社であり、マサチューセッツ州にその主たる事業所を有するものである。同社は、ラジオ、ステレオ装置、レコード・プレーヤ、テーポ・レコーダ、カセット・レコーダ、プレーヤおよびエレクトロニクス装置の製造、販売、その他の事業に従事している。

2、ここに記述されるあらゆる時点において MERIT INTERNATIONAL CORP. (以下「メリット社」という) は、マサチューセッツ州法に基づき設立され、存在している株式会社であり、マサチューセッツ州および日本国東京にそれぞれその主たる事業所(支店)を有するものである。同社はオートマティック社が100%所有する子会社であり、オートマティック社の独占的購入代理人の事業に従事している。

3、我々の得た情報および我々の信ずるところによれば、

CROWN RADIO CORPORATION (JAPAN) (以下「クラウン社日本」という) は、CROWN RADIO CORPORATION の名称を用いて事業活動に従事している日本国の会社であり、東京、ニューヨーク、サンフランシスコ、パナマ、コロン、デュッセルドルフおよびロンドンにそれぞれ事業所を有している。同社は、ラジオ、ステレオ装置、テープ・レコーダ、カセット・レコーダ、プレーヤ、その他類似品の製造、販売、その他の事業に従事している。

4. CROWN RADIO CORPORATION (NEW YORK)
(以下「クラウン社ニューヨーク」という) は、ニューヨーク州法に基づき設立され存在している会社であり、現在、カリフォルニア州サンフランシスコに事業所を有している。

5. 我々の得た情報および我々の信ずるところによれば、クラウン社ニューヨークはクラウン社日本の100%所有する子会社であり、また合衆国におけるクラウン社日本の販売代理人である。クラウン社ニューヨークによる上述の販売は、上記のあらゆる時点において、ニューヨーク州および合衆国内のその他の地域においてなされてきた。

6. 本裁判所は、本件訴訟額が訴訟費用および利息を除き10,000.00ドルを超え、かつ異州籍(国籍)当事者間の事件であるとの事実に基づき、本件訴訟につき管轄権を有する(ス&L, S. C. §1332)。

原告らの被告らに対する請求原因(オ1)

7. 1969年の初期に、メリット社はオートマテック社の購入代理人として、また、オートマテック社はその役員およびその他の代表者を通して、クラウン社日本との間に、カセット・レコーダ、プレーヤ、カセット・テープ、マイクロホン、およびその他の装置を製作することに關し、日本国、マサチューセッツ、およびニューヨークにおいて交渉に入った。

8. 原告らと被告クラウン社日本はかくして契約を締結するにいたり、クラウン社日本は、同契約において前記カセット・レコーダ、プレーヤおよび装置を、オートマテック社およびメリット社のために原告らの提供する仕様ならびに設計に従って製作することを約した。

9. 同契約に基づき、オートマティック社は、原告らの侵害したモデルに対するシャーシ・デザインをクラウン社日本に提

10. このカセット・レコーダ・プレーヤのシャーシ・デザイン、スタイル、および物理的ならびに機械的構成ならびに外観を保護するために、オートマティック社およびメリット社は、クラウン社日本は、そのような装置をもっぱらオートマティック社およびメリット社のために製作し、また上記製品の製作および販売をオートマティック社およびメリット社に限ることを主張した。

11. クラウン社日本は、もし原告らがそのような装置をクラウン社日本に発注すれば、上述のデザイン、スタイル、物理的および機械的構成および外観のカセット・レコーダ・プレーヤの製作および販売を原告らにのみ限ると同意した。

12. クラウン社日本は、同社が原告らのために製作し、また販売される製品と類似の製品に関し、世界中のいづれの地域においても他の人物、会社または株式会社に対し注文の勧誘および販売をしないこと、および、その子会社または代理人クラウン社ニューヨークをして同様の行為をなすことを許可しないことを、原告らに約した。

13. 1969年5月8日またはその頃、メリット社は、オートマティック社の代理人として、上に記述した通りのカセット・レコーダ・プレーヤ10,000台をクラウン社日本に発注した。一台あたりの価格は、工場渡し56ドル22セントで、総額562,200.00ドルであった。オートマティック社への出荷および引き渡しの費用を含めると一台あたり65ドル81セントになり、上記10,000台のカセット・レコーダ・プレーヤの総購入価格は658,100.00ドルになった。

14. 本件当事者間の前記契約に従い、オートマティック社の代理人たるメリット社の購入注文書には、この事実に関し次のごとき裏書きが記載されていた。

「本モデルはもっぱらオートマティック・ラジオ社の独占的かつ永久的使用に供されるものである。類似または関連したモデルをオートマティック・ラジオ社の文書による明示の同意なしに他の人物または会社に提供してはならないものとする。」

15. クラウン社日本は上記契約条項を承諾して同購入注文を受け、商品を原告らに出荷した。原告らはそれに対して支払いをなした。 33a

16. 1969年10月31日またはその頃、上記の通りの原告らとクラウン社日本との間の契約の上の条項、条件および規定を信頼して、原告らは、ヨーロッパ向け電圧プラグ・アダプター付きのカセット・レコーダ、プレーヤをさうに3,000ユニット一台57ドル93セント、総額F.O.B東京173,794.00ドルで注文した。

17. クラウン社日本は上記の商品を原告らに出荷し、またそれに対して原告らは全額支払をなした。

18. 原告らは、1969年11月より1970年5月に至るまで(5月を含む)、の間にクラウン社日本から注文した13,000台のカセット・レコーダ・プレーヤの究極的引渡を受け取った。

19. その後、また1970年5月またはその頃、クラウン社日本、および、その子会社ならびに代理人であるクラウン社・ニューヨークは、世界各地のディストリビューターおよび販売代理店に対する他、東京、ニューヨーク、サンフランシスコ、パナマ、コロムビア、デュセルドルフ、およびロンドンにおいてはその販売事務所を通して大衆一般に対してカセット・レコーダ・プレーヤを販売用に導入した。これらレコーダ・プレーヤは、原告ら自身のデザインに基づき原告らのために被告クラウン社日本が製作したカセット・レコーダ・プレーヤとデザイン、外観において類似し、極めて類似しているために實際上同一物と認めるに足りるものであった。

20. 上記の被告らの行為は、原告らと被告らとの間の契約、特に、原告オートマチック社の永久的使用に供するため、原告らのために独占的に製作し、また販売すべきモデルの製作、注文の勧誘および販売に関する条項ならびに、原告オートマチック社の文書による明示の同意なしには類似または関連モデルに関し、他の人物または会社から注文を勧誘し、それらのもののために製作し、あるいは、それらのものに販売しないという条項に違反するものである。

21. 原告らは、被告らが原告らとの間の契約に違反したことを知ると直ちに、被告らにおいて製作し、原告らに販売したカセット、レコード、フォレーヤの未販売分を全て返品すると申し出た。被告らは上記商品の提供を受けることを拒否し、また上述の通り、カセット、レコード、フォレーヤの製作、販売の勧誘、販売および広告を一般大衆に対し、特にニューヨーク州内において、なし続けている。

22. 被告らは、原告オートマテック社がこれらカセット、レコード、フォレーヤをスピーカなしで卸し値99ドル95セントで販売していることを認識しているにもかかわらず、原告らがそのカセット、レコード、フォレーヤを販売しようと試みている同一の顧客に対し、同一カセット、レコード、フォレーヤをスピーカを含め一台あたり77ドル90セントの価格で販売の申し出をし、よって、出血販売をしない限り、カセット、レコード、フォレーヤを販売できない状況に原告らを進み込んできた。

23. 原告らは、上記の理由により少なくとも1,545,050.00ドルの損害、および、以下に主張する請求原因にもとづく損害賠償として相当と認められる額の損害をこうむった。

原告らの被告らに対する請求原因(オス)

24. 原告らは、本訴状中オフ項よりオスス項(オフ項およびオスス項を含む)の全ての事項を、ここに全文そのまま述べたものとして、再び反復して主張する。

25. 1969年初期に、被告クラウン社日本が製作し、また被告クラウン社日本ならびにその子会社および代理人たるクラウン社ニューヨークが販売したカセット、レコード、フォレーヤの購入のための上記原告らと被告ら間の一連の契約となつてその後実を結ぶに至った原告らと被告ら間の交渉の際、上記被告らは原告らに対し、上記のカセット、レコード、フォレーヤのモデルおよびシャーシ、デザインを、いかなる方法にせよ複製し、または模倣しようと試みないこと、被告クラウン社日本が製作するモデルは、原告オートマテック社の独断的かつ永久的使用に供するものであり、また類似ないし関連したモデルを他の人物または会社には提供しないこと、また被告クラウン社日本ならびにその子会社および代理人たるクラウン社ニューヨークは、オートマテック社の文書による同意

なしたは他の人物または会社に対し、上記製品の広告、注文の勧誘または販売をしないことを保証し、また表示した。

ス6、原告らは、これら保証および表示を信頼して、被告クラウン社日本より上記タイプのノミ、000台のカセット・レコード、プレーヤを注文し、また支払をなしたのである。

ス7、被告らは、原告オートマテック社の独占的かつ永久的使用のために製作されたモデルにデザインが非常に類似しており、實際上同一物と認めるにたるカセット・レコード、プレーヤを、ニューヨーク州、合衆国内のその他諸地域および諸外国地域において、原告らと直接競争する形で、製造し、広告し、注文を勧誘し、販売し、よって、原告らになされた前記保証および表示に違反した。

ス8、原告らは、原告らに対し被告らがなした保証の違反の理由により、最低1,545,050.00ドルの損害ならびに、以下に主張する請求原因に基づく損害賠償として相当と認められる額の損害をこうむっており、また引き続きこうむるであろう。

原告らの被告らに対する請求原因(オ3)

ス9、原告らは、本訴状中オ7項よりオスス項(オ7項およびオスス項を含む)、またオス4項よりオス7項(オス4項およびオス7項を含む)の全ての事項を、ここに全文そのまま述べたものとして、再び反復して主張する。

30、被告クラウン社日本は、被告らからのカセット・レコード、プレーヤ購入に關する最初のまたそれに引き続く契約に原告らを引き込むために、またさらに原告らの財産である上記カセット・レコード、プレーヤのモデルおよびシヤーシ、デザインを得るために、原告らが被告らに提供するモデルおよびシヤーシ、デザインのカセット・レコード、プレーヤを相当数原告らが注文するならば、上記クラウン社日本は原告オートマテック社の独占的かつ永久的使用に供するため上記カセット・レコード、プレーヤを製作すること、ならびに、クラウン社日本またはその子会社および代理人たるクラウン社ニューヨークは、類似ないしは関連したモデルを他の人物または会社对原告オートマテック社の文書による明示の同意なしには提供しないことを、事実を偽って欺罔的に保証し、また表示した。

31. 原告らは、上記保証および表示を信頼し、またそれらを真実と信じたうえで、被告らと契約を結び、それに基づきモデルおよびシャーシ・デザインを被告らに提供し、また13,000台のカセット・レコーダ・プレーヤの注文をしたのである。

32. 被告らは、これら保証および表示をなした際に、それが事実と反し、欺罔的なものであることを認識しており、もっぱら、原告らの所有財産であるモデルおよびシャーシ・デザインを獲得し、原告ら13,000台のカセット・レコーダ・プレーヤの購入に誘い込むことを目的としてこれら保証ならびに表示をなしたのである。

33. もし原告らにおいて、上記の保証および表示が事実を偽った欺罔的なものであることを知っておれば、原告らは、被告らからのモデルおよびシャーシ・デザインのコピーを提供しなかったであろうし、また被告らから、カセット・レコーダ・プレーヤを注文しなかったであろう。

34. 事実かつ真実に、被告らは、原告らに事実を偽った欺罔的な保証ならびに表示をなした時に、類似モデルのカセット・レコーダ・プレーヤを複写し、製作し、広告し、注文を勧誘し、また一般大衆に、原告らが販売できる値段より低い値で、しかも利益をもって販売でき、また販売すると云うことを十分に認識して上記保証および表示をなした。

35. 原告らは上記の被告らの詐欺により、最近1,545,050.00ドルの損害、ならびに以下に述べる請求原因に基づく損害賠償として、相当と認めらるる額の損害をこうむった。

原告らの被告らに対する請求原因(カ4)

36. 原告らは、本訴状中カ7項よりカ22項(カ7項およびカ22項を含む)、カ24項よりカ27項(カ24項およびカ27項を含む)、および、カ30項よりカ34項(カ30項およびカ34項を含む)の全ての事項を、ここに全文そのまま述べたものとして、再び反復して主張する。

37. 被告らが原告らに対してなした前記の事実を偽り欺目的な保証、表示、および声明は、故意をもって、また事前に考慮された害意をもってなされたものであり、本件原告らを欺罔のうえ、原告らの所有財産たるカセット・レコード、フレーヤのシャシー・モデル、スタイルおよびデザインを取得し、原告らを被告らとの間の契約に引きこみ、さらに原告らを最低13,000台のカセット・レコード、フレーヤの購入に誘引せしめるとの意図をもって、悪意かつ害意のもとになされたのである。しかしその間同被告らは、上記シャシー・モデル、スタイルおよびデザインを複製し、上述のカセット・レコード、フレーヤを原告らの書面による同意を得ることなく、他の者のためにこれを製作し、販売し、また、その製品を合衆国内、特にニューヨーク州内において広告し、販売のために注文を勧誘するとの意図を有していたのである。

38. 原告らは、被告らの悪意および害意のもとになされた詐欺に基づき、原告らは約545,050.00ドルの三倍額の損害ならびに本訴状記載の他の請求原因にもとづく損害として相当として認められる額の三倍額の損害をこうむり、また将来もこうむるであろう。

原告らの被告らに対する請求原因(ホ5)

39. 原告らは、本訴状中ホ7項よりホ22項(ホ7項およびホ22項を含む)、ホ24項よりホ27項(ホ24項およびホ27項を含む)、およびホ30項よりホ34項(ホ30項およびホ34項を含む)の全ての事項を、ここに全文そのまま述べたものとして再び反復して主張する。

40. 原告らは、本裁判所が、被告らがさらに原告らとの競争的活動にたずさわることとを差止めること、本原告らのために製作し、販売され、また被告らが原告らのためにのみ独占的に製作、販売する合意した種類のシャシー・モデル、スタイルおよびデザインを有するカセット・レコード、フレーヤとデザインにおいて類似または関連したカセット・レコード、フレーヤに關し、製作、販売の申し出、販売、広告、パブリックその他展示品の配布を差止めること、およびそのようなカセット・レコード、フレーヤを原告ら以外のディストリビューター、人物、会社、組織、株式会社またはパートナーシップのために製作、製造また販売する上でディストリビュー

-タと取引をすることを差止めることを求める。

41、原告らは、原告らに対する回復不能な継続的損害を防止するのに適切な普通法上の救済方法を有しない。

原告らの被告らに対する請求原因(オ1)

42、原告らは、本訴状中オ7項よりオス2項(オ7項およびオス2項を含む)、オス4項よりオス7項(オス4項およびオス7項を含む)、およびオ30項よりオ34項(オ30項およびオ34項を含む)の全ての事項を、ここに全文そのままだ述べたものとして、再び反復して主張する。

43、上記の原告らの購入にかかる約13,000台のカセット・レコーダ、フレーヤを原告らに引き渡す以前、または引渡し時頃、上記被告らは類似または関連したモデルのカセット・レコーダ、フレーヤの製作を開始し、また、原告らが上記カセット・レコーダ、フレーヤに対して支払った額よりも低い価格で、原告らと競争する形で販売の申し出をし始めた。

44、我々の得た情報および我々の知るところによれば、被告らは、上に主張したごとく原告のカセット・レコーダ、フレーヤとデザインが類似し、または関連したカセット・レコーダ、フレーヤを何千台と、原告以外の人物のために製作し、また販売してきた。

45、原告らは、原告ら以外の人物に販売されたカセット・レコーダ、フレーヤの正確なる数量を認知せられ、したがって、上に主張した行為および取引を通じ被告らが、得た利益、ならびに、原告らがこうむった金銭、利益および営業権上の損失の正確なる度合を決定するには帳簿計算命令が認められることが必要である。

46、原告らは、そのこうむった損失の度合を決定する適切な普通法上の救済手段を有さない。
よって、原告らは以下の判決を求める。

(a) 原告らの請求原因(オ1)に基づき、1,545,050.00ドルおよび相当と認められる損害額。

(b) 原告らの請求原因(オ2)に基づき、1,545,050.00ドルおよび相当と認められる損害額。

(C) 原告らの請求原因(オ3)に基づき、1545,050.00
ドルおよび相当と認められる損害額。

(d) 原告らの請求原因(オ4)に基づき、1,545,050.00
ドルの三倍賠償および相当と認められる損害の三倍賠
償。

(e) 原告らの請求原因(オ5)に基づき、原告らのため
に製作されたタイポと類似または関連したタイポのカセ
ット、レコーダ、プレーヤを製作、販売、分配、広告、およ
び販売の申し出さ上記被告らがなすことを差止める
永久差止命令。

(f) 原告らの請求原因(オ6)に基づき、製作、販売、
販売の申し出、および分配されたカセット、レコーダ、プ
レーヤの数量ならびにそれより被告らが得た利益に
関して被告による帳簿計算の命令。

以上の他、原告らは、訴訟費用および本訴関連諸費用、
各請求権発生時以後の利息金、本裁判所が適切と認め
る合理的な弁護士費用を、被告らに負担させる判決、な
らびに、本裁判所が相当と認めらるその他の救済を求
める。

原告ら訴訟代理人弁護士 ダニエル・ローゼン
ニューヨーク州ニューヨーク市ブロード通り30
郵便番号 10004

事件番号 72 Civ 4864

40a

合衆国ニューヨーク州南部地区連邦地方裁判所

原告 AUTOMATIC RADIO MFG. CO., INC.
同 MERIT INTERNATIONAL CORP.
被告 CROWN RADIO CORPORATION
(JAPAN)
同 CROWN RADIO CORPORATION
(NEW YORK)

召喚状 および訴状

原告訴訟代理人弁護士 ダニエル・ローゼン

事務所の住所簿:

ニューヨーク州 ニューヨーク市ブロード通り
30番地

郵便番号 10004

電話 HA2-8456

• REQUEST •
REQUEST FOR DOCUMENTS
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

41a

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Identity and address of the applicant
John Livingston
Clerk of Court
United States District Court
For The
Southern District of New York

Address of receiving authority
Ministry of Foreign Affairs
1-1 Kasumigaseki
Chiyoda-Ku, Tokyo
Japan

The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,

(identity and address) Crown Radio Corporation, 17-4, 3-Chome, Ueno, Taisho-Ku, Tokyo, Japan

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention *.

~~(b) in accordance with the provisions of sub-paragraph (b) of the first paragraph of article 5 of the Convention *.~~

~~(c) to deliver to the addressee if he accepts it or to the Ministry of Foreign Affairs if he does not.~~

The authority is requested to return or to have returned to the applicant a copy of the documents — and of the annexes * — with a certificate as provided on the reverse side.

List of documents

- (a) Summons & Complaint in United States District Court for the Southern District of New York
- (b) Japanese language translation of complaint.
- (c) Request for service
- (d) Certificate and Summary of documents to be served.

Done at New York, N. Y. 21st day of
May, 1973.

Signature and/or stamp.

* Delete if inappropriate.

SUMMARY OF THIS DOCUMENT TO BE SERVED

42a

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

(Article 5, fourth paragraph)

Name and address of the requesting authority: John Livingston, Clerk of Court, United States District Court for the Southern District of New York, Foley Square, New York, N. Y.

Particulars of the parties: Automatic Radio MFG. Co., Inc., and Merit International Corp., Plaintiffs (c/o Daniel Rosen, Esq., 30 Broad Street, New York, New York, 10004 U.S.A.) Crown Radio Corporation (Japan), Defendant.

JUDICIAL DOCUMENT **

Nature and purpose of the document: Summons and Complaint in the United States District Court for the Southern District of New York

Nature and purpose of the proceedings and, where appropriate, the amount in dispute: Suit for Recovery of damages in excess of U.S. \$1,545,060.00, together with interest thereon from the date of accrual of action, plus punitive damages of \$4,635,150.00.

~~Documents and exhibits accompanying:~~

~~Costs which have been incurred:~~

~~Sum of judgment:~~

Time limits stated in the document: Answer to Complaint required within twenty days after service of summons and complaint, exclusive of the day of service.

~~REDACTED DOCUMENT~~

~~REDACTED DOCUMENT~~

~~REDACTED DOCUMENT~~

* If appropriate, identity and address of the person interested in the transmission of the document.
 ** Delete if inappropriate.

CERTIFICATE

43a

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention

1) that the document has been served *

- the (date) _____
- at (place, street, number) _____
- in one of the following methods authorised by article 5 --
 - (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention * 1
 - (b) in accordance with the following particular method *: _____
 - (c) by delivery to the addressee, who accepted it voluntarily *

The documents referred to in the request have been delivered to:

- (identity and description of person) _____
- relationship to the addressee (family, business or other): _____

2) from the authorities and the interested parties, by means of the following route: _____

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement *.

Annexes

Documents returned: _____

In appropriate cases, documents establishing the service: _____

Done at _____, the _____

Signature and/or stamp.

* Delete if inappropriate.

NOTICE OF MOTION FILED DECEMBER 10, 1973

44a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AUTOMATIC RADIO MFG. CO. INC.,
and MERIT INTERNATIONAL CORP.,

Plaintiffs,

Index No. 72 CIV. 4864 RLC

- against -

NOTICE OF MOTION

CROWN RADIO CORPORATION (JAPAN)
and CROWN RADIO CORPORATION
(NEW YORK),

Defendants
-----x

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavits of
T. UCHIYAMA, sworn to the 29th day of November, 1973, and DUGALD C.
BROWN, sworn to the 7th day of December, 1973, the undersigned attorneys
for Crown Radio Corporation (Japan) will move this Court before the Hon.
Robert L. Carter, United States District Court Judge at the United States
Courthouse located at Foley Square, New York, New York, on the 28th day
of December, 1973, at 10:00 o'clock in the forenoon of that day, for an
order pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure
dismissing the above entitled action as against said defendant upon the
ground that this Court lacks jurisdiction over the person of said defendant
and upon the further ground that a prior adjudication of this Court that it
lacks in personam jurisdiction over defendant is res judicata.

Dated: New York, New York
December 10, 1973

Yours, etc.,

WHITMAN & RANSOM

By Dugald Campbell Brown
A Member of the Firm

Attorneys for Defendant
Crown Radio Corporation (Japan)
Office & P. O. Address
522 Fifth Avenue
New York, New York 10036
(212) 667-1700

AFFIDAVIT OF T. UCHIYAMA IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

45a

-----x
AUTOMATIC RADIO MFG.CO., INC. :
and MERIT INTERNATIONAL CORP., :

Plaintiffs, :

-against- :

CROWN RADIO CORPORATION :
(JAPAN) and CROWN RADIO :
CORPORATION (NEW YORK), :

Defendants. :

72 CIV. 4864 RLC

AFFIDAVIT

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

T. UCHIYAMA, being duly sworn, deposes and says:

1. I am Manager, General Affairs Planning Department of Crown Kabushiki Kaisha (sued herein as "Crown Radio Corporation (Japan)" and hereinafter referred to as "Crown (Japan)"), a corporation duly organized and existing under and by virtue of the laws of Japan and maintaining its principal office for the transaction of business in Tokyo, Japan. I am fully familiar with the facts and matters involved in the making of this motion. I make this affidavit in support of the motion of the defendant Crown (Japan) to dismiss the above-entitled action pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure upon the ground that this Court lacks jurisdiction over Crown (Japan) and upon the ground that a prior adjudication of the jurisdictional issue by this Court is res judicata.

2. Plaintiffs allege in substance that they entered

into an agreement with Crown (Japan) whereby Crown (Japan) agreed to manufacture a certain model of cassette recorder players exclusively for plaintiffs. Plaintiffs further allege that in accordance with this agreement, purchase orders for some 13,000 units of cassette recorder players were issued from Merit International Corp. to Crown (Japan).

3. It is true that Crown (Japan) made sales of 13,000 units of its model No. CHX-9912 to plaintiff, Merit International Corp. These sales were effected through purchase orders received by Crown (Japan) from Merit International Corp.'s Tokyo office. The dates and numbers of those purchase orders are as follows:

May 8, 1969, No. 03505 (10,000 units)
November 5, 1969, No. 04140 (1,300 units)
November 5, 1969, No. 04141 (1,700 units)

4. The units embraced in order No. 03505 for 10,000 units were picked up by Merit International Corp. at the Crown warehouse in Tokyo, and the remaining 3,000 units embraced in purchase orders Nos. 04140 and 04141 were shipped by Crown (Japan) to Merit International Corp., c/o Toho Koun Co., Ltd. in Yokohama, Japan. Thus, the orders were placed in Japan with Crown (Japan) and the units were delivered by Crown (Japan) in Tokyo. Moreover, all negotiations or transactions which culminated in the issuance of the aforementioned purchase orders occurred in Japan.

5. Crown (Japan) has neither transacted nor done any business in the State of New York and is not licensed nor authorized to do so. It does not maintain and never has maintained any office, place of business, telephone listing, mailing address, bank account, warehouse or inventory in the

47a

State of New York, and no officers, directors or employees of Crown (Japan) are domiciled or residing in that State. In addition, Crown (Japan) neither owns nor leases any real property in the State of New York and does not advertise its products there.

6. Crown (Japan)'s only connection with the State of New York is that it owns most of the outstanding stock of Crown (New York), a New York corporation, having its present and only base of operations in San Francisco, California. Crown (New York) operates as an independent corporation under the supervision and control of its own officers and directors. In addition, the books and records of Crown (New York) are not maintained by Crown (Japan)'s accountants and the financial records of Crown (New York) are not reported on a consolidated basis with those of Crown (Japan). Furthermore, Crown (Japan) does not pay for or prepare promotional and advertising materials used by Crown (New York) in the United States.

7. Although Crown (New York) purchases and sells only products manufactured by Crown (Japan), Crown (Japan) also manufactures similar products for other companies under other brand names, which products are sold in competition with products sold by Crown (New York). Crown (Japan)'s method of marketing its products for eventual use in the United States is to sell its products in Japan to other Japanese or American corporations which make their own arrangements for the importation of these products into the United States. Once Crown (Japan) has sold its products in Japan, it plays no further role in the distribution process and does not warrant or guarantee products purchased in Japan destined for resale in the United

8. I should also like to point out that Crown (New York) did not participate in any of the negotiations and transactions which culminated in the issuance of purchase orders for the 13,000 units of cassette recorder players from Merit International Corporation to Crown (Japan). Moreover, since Crown (New York) is a separate and distinct corporate entity supervised by its own officers and directors, the references in plaintiffs' complaint to the effect that Crown (Japan) could bind Crown (New York) by contract or otherwise are sheer nonsense. Accordingly, the allegations made in plaintiff's complaint which indicate that Crown (New York) agreed, warranted or represented anything to plaintiffs or that it was bound by anything to which Crown (Japan) allegedly agreed are wholly without factual foundation.

9. In view of the foregoing, I submit that Crown (Japan) is not subject to the jurisdiction of this Court.

WHEREFORE, I respectfully request that the motion of defendant Crown (Japan) to dismiss this action be granted in all respects.

Takashi Uchiyama
T. UCHIYAMA

Subscribed and sworn to before me
this 24th day of November, 1973.

Gladys S. Speer

Notary Public for the State of New York
No. 41 0127210
Cert. filed with the State of New York
Term Expires March 30, 1974

AFFIDAVIT OF DUGALD CAMPBELL BROWN
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

49a

----- x
AUTOMATIC RADIO MFG. CO., INC., :
and MERIT INTERNATIONAL CORP., :

Plaintiffs, :

72 Civ. 4864

- against - :

AFFIDAVIT

CROWN RADIO CORPORATION (JAPAN) :
and CROWN RADIO CORPORATION :
(NEW YORK), :

Defendants. :

----- x
STATE OF NEW YORK)
: SS. :
COUNTY OF NEW YORK)

DUGALD CAMPBELL BROWN, being duly sworn, deposes and
says:

1. I am a member of the bar of this Court and a member of the
firm of Whitman & Ransom, attorneys for defendant Crown Radio Cor-
poration (Japan) (hereinafter referred to as "Crown (Japan)"). I make
this affidavit in support of the motion of the defendant Crown (Japan) to
dismiss the above entitled action pursuant to Rule 12(b)(2) of the Federal
Rules of Civil Procedure upon the ground that this Court lacks jurisdiction
over the person of defendant Crown (Japan) and upon the ground that a
prior adjudication of the issue of this Court's jurisdiction over Crown
(Japan) is res judicata in this action.

2. In a prior action instituted in this Court entitled "Automatic
Radio Mfg. Co., Inc. and Merit International Corp., Plaintiffs, against
Crown Radio Corporation, Defendant," (71 CIV. 267), plaintiffs sought to
recover damages in the sum of \$1,545,000.00 against Crown (Japan) for

an alleged breach of an agreement entered into in Japan between Merit International Corp. (hereinafter "Merit") as agent for Automatic Radio Mfg. Co., Inc. (hereinafter "Automatic") and Crown (Japan). A copy of the complaint in that action is annexed hereto, marked Exhibit "A". Plaintiff's complaint in that action alleged in substance that Crown (Japan) had agreed to manufacture certain cassette recorder players and accessories for plaintiffs and that Crown (Japan) violated a provision of the agreement which prohibited Crown (Japan) from offering for sale a model similar to the one manufactured for plaintiffs to other companies or persons without the written consent of plaintiffs. That action was concluded by a combined Order and Judgment of this Court entered on June 7, 1972, which granted a motion made by Crown (Japan) to dismiss the action under Rule 12(b)(2) of the Federal Rules of Civil Procedure upon the ground that this Court lacked jurisdiction over the person of the defendant. The basis of the dismissal was that the plaintiffs had failed to prove that Crown (Japan) was "doing business" in New York State. A copy of the Court's decision and the Order and Judgment embodying that decision are annexed hereto and marked Exhibits "B" and "C" respectively.

3. On or about October 23, 1973, the summons and complaint in this action were served in Tokyo, Japan upon Crown (Japan). In this action, plaintiffs assert essentially the same facts, and ask for the same damages, as they did in their prior action against Crown (Japan). A copy of plaintiffs' complaint in this action is annexed hereto and marked Exhibit "D".

4. As is shown by the affidavit of T. Uchiyama submitted in support of the motion of Crown (Japan), Crown (Japan) has never done

and is not presently doing business in New York State. Moreover, there were no activities conducted by Crown (Japan) in New York from which plaintiffs' purported causes of action arose.

5. As previously stated, the prior action was instituted against Crown (Japan) alone. No allegations whatsoever were made in the complaint in that action concerning Crown (New York) and there were no allegations that negotiations which led to the formation of the alleged contract took place in New York. The only allegation which provided any nexus between the action and the State of New York was that Crown (Japan) had an office in New York, an allegation which proved to be false. Plaintiffs now attempt to furnish a jurisdictional predicate to this Court by alleging that negotiations were conducted in New York and that Crown (New York) a New York corporation, is a wholly owned subsidiary of Crown (Japan). The question which obviously comes to mind is why plaintiffs did not make these allegations in the prior action.

6. In the prior action, plaintiffs asserted that Crown (Japan) was doing business in New York. Now plaintiffs, in effect, allege that Crown (Japan) by virtue of negotiations conducted in New York is subject to jurisdiction under the New York "long-arm" statute, CPLR § 302. Since CPLR § 302 was in effect and ostensibly available as a jurisdictional predicate to plaintiffs at the time the first action was commenced, it is quite puzzling that they chose to ignore it.

7. While no allegations were made in the prior action in plaintiffs' complaint relating to the parent-subsidary relationship, the relationship between these corporations for purposes of obtaining in personam jurisdiction over Crown (Japan) was considered by the Court and found not

sufficient to hold that Crown (Japan) was doing business in New York by reason of the activities of Crown (New York).

8. Plaintiffs have not alleged any jurisdictional facts that did not exist at the time the prior action was commenced. The memorandum of law to be submitted herewith shows that the prior judgment dismissing the action for lack of personal jurisdiction over Crown (Japan) is res judicata on that issue. Even without that prior adjudication, however, the affidavits and authorities cited in support of the defendants' motion clearly show that this Court lacks personal jurisdiction over Crown (Japan).

WHEREFORE, I respectfully request that the motion of defendant Crown (Japan) to dismiss this action be granted in all respects.

Dugald Campbell Brown
DUGALD CAMPBELL BROWN

Sworn to before me this
7th day of December, 1973.

Gladys S. Spier

CLERK OF S. SPICER
Notary Public - State of New York
No. 41-0100000 - Notary Public Co.
Cert. Filed with New York Co. Clerk
Term Expires March 30, 1974

EXHIBITS ANNEXED TO AFFIDAVIT OF DUGALD CAMPBELL BROWN

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 71 Civ. 267

AUTOMATIC RADIO MFG. CO., INC., and
MERIT INTERNATIONAL CORP.,

Plaintiff

v.

SUMMONS

CROWN RADIO CORPORATION,

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

DANIEL ROSEN,

plaintiff's attorney , whose address is 30 Broad Street, New York, New York 10004

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

John C. [Signature]
Clerk of Court.

Deputy Clerk.

Date: Jan 17 1971
January 20, 1971

[Seal of Court]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

AUTOMATIC RADIO MFG. CO. INC., and
MERIT INTERNATIONAL CORP.,

CIVIL ACTION
NO. 71 CIV. 267

Plaintiffs,

COMPLAINT

against

CROWN RADIO CORPORATION,

Defendant.

- - - - -x

AUTOMATIC RADIO MFG, CO., INC., ("AUTOMATIC")
and MERIT INTERNATIONAL CORP. ("MERIT"), by their at-
torney, DANIEL ROSEN, complaining of the defendant
CROWN RAIDO CORPORATION ("CROWN"), respectfully allege:

PARTIES AND JURISDICTION

1. At all the times herein mentioned, AUTOMATIC
was and is a corporation organized and existing under
the laws of the State of Massachusetts and having its
principal place of business in the State of Massachusetts.
AUTOMATIC is engaged in the business, among others, of

manufacturing and selling radios, stereophonic outfits, record players, tape recorders, cassette recorder players and electronic equipment.

2. At all of the times herein mentioned, MERIT was and is a corporation organized and existing under the laws of the State of Massachusetts and having two principal places of business, one in the State of Massachusetts, the other in Tokyo, Japan. MERIT is a wholly owned subsidiary of AUTOMATIC and is engaged in the business of being the purchasing agent for AUTOMATIC exclusively.

3. Upon information and belief, CROWN is a Japanese corporation conducting business and maintaining offices in Tokyo, New York, San Francisco, Panama, Colon, Dusseldorf and London. It is engaged in the business, among others, of manufacturing and selling radios, stereophonic equipment, tape recorders, cassette recorder players and similar items.

4. This Court has jurisdiction over this claim by reason of the fact that the matter in controversy exceeds the sum of \$10,000.00, exclusive of costs

and interest and by reason of the diversity of citizenship of the parties, (28 U.S.C. § 1332).

AS AND FOR A FIRST CAUSE OF
ACTION ON BEHALF OF THE
PLAINTIFFS

5. In the early part of 1969, MERIT, acting as the purchasing agent for AUTOMATIC, and AUTOMATIC through its representatives, entered into negotiations with the defendant for the manufacture of certain cassette recorder players, together with blank cassettes, microphones and other equipment.

6. The plaintiffs and the defendant then entered into an agreement wherein and whereby the defendant agreed to manufacture the aforementioned cassette recorder players with equipment, for AUTOMATIC and MERIT, according to certain specifications and designs to be submitted by the plaintiffs.

7. In accordance with the agreement, AUTOMATIC furnished to the defendant its chassis design for the model so ordered for plaintiffs.

8. In order to protect its chassis design, styling and physical and mechanical set-up and appearance

of the cassette recorder player, AUTOMATIC and MERIT insisted that the defendant manufacture such equipment exclusively for AUTOMATIC and MERIT.

9. The defendant agreed that it would limit its manufacture and production of the cassette recorder player of such design, styling, physical and mechanical set-up and appearance to the plaintiffs if the plaintiffs would place an order for such equipment with the defendant.

10. On or about May 8, 1969, MERIT, acting as agent AUTOMATIC placed an order with the defendant for 10,000 cassette recorder players, as hereinbefore described. The cost per unit was \$56.22, ex-factory for a total purchase price of \$562,200.00. The cost of shipping and delivery to AUTOMATIC raised the cost per unit to \$65.81, making the total purchase price of the 10,000 cassette recorder players \$658,100.00.

11. In accordance with the agreement between the parties hereto, the purchase order of MERIT, acting on behalf of AUTOMATIC, contained the following endorsement on the face thereof:

"This model is for the exclusive and permanent use for Automatic Radio only. No similar and/or associated model shall be offered to other persons or companies without the express written consent of Automatic Radio."

12. The purchase order was accepted by the defendant pursuant to the terms and provisions hereinbefore alleged and the merchandise was shipped by the defendant to the plaintiffs and paid for by the said plaintiffs.

13. On or about October 31, 1969, in further reliance upon the terms, conditions and provisions of the agreement between the plaintiffs and the defendant as hereinbefore alleged, the plaintiffs ordered an additional 3,000 units of the cassette recorder players with European voltage plug adaptors, at a price of \$57.93 per unit, for a total cost of \$173,790.00, F.O.B., Tokyo, Japan.

14. The aforesaid merchandise was shipped by the defendant to the plaintiffs and was fully paid for by said plaintiffs.

15. The plaintiffs received ultimate delivery of the 13,000 cassette recorder players ordered from the defendant, commencing in November of 1969, up to and

Including May of 1970.

16. Thereafter, and in or about May of 1970, the defendant introduced cassette recorder players for sale to the public through its own sales offices located in Tokyo, New York, San Francisco, Panama, Colon, Dusseldorf and London, as well as to distributors and sales agencies throughout the world. These cassette recorder players were so close in design and appearance, and so similar to the cassette recorder players manufactured by the defendant for the plaintiffs from the plaintiffs' own design, as to be practically identical thereto.

17. The aforesaid acts of the defendant constituted a breach of the agreement between plaintiffs and defendant, and more particularly a breach of the provision to manufacture such models exclusively for the permanent use of the plaintiff AUTOMATIC and not to offer to any other persons or companies any similar or associated model without the express written consent of the plaintiff AUTOMATIC.

18. Immediately upon learning that the defendant had breached its agreement with the plaintiffs, the

plaintiffs offered to return all unsold cassette recorder players manufactured by the defendant for the plaintiffs. The defendant refused to accept the tender of said merchandise and has continued to manufacture, advertise and sell the cassette recorder players to the general public as hereinbefore alleged.

19. Although the defendant was aware that the plaintiff AUTOMATIC was selling these cassette recorder players at the wholesale price of \$99.95 without speakers, the defendant offered the same cassette recorder player to the identical customers to whom plaintiffs were attempting to sell the cassette recorder players at a price of \$77.00 per unit including speakers, thus depriving the plaintiffs of any possibility of being able to make a sale of these cassette recorder players, except at a loss to the plaintiffs.

20. By reason of the foregoing, the plaintiffs have suffered damages in the minimum sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded the plaintiffs as and for damages on the subsequent causes of action hereinafter alleged.

AS AND FOR A SECOND CAUSE
OF ACTION ON BEHALF OF THE
PLAINTIFFS

21. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "1" through "19" inclusive in said complaint contained, as if same were fully set forth at length herein.

22. That early in 1969, at the time of the negotiations between the plaintiffs and defendant resulting in the agreement between said plaintiffs and defendant for the purchase of certain cassette recorder players manufactured by the defendant, said defendant warranted and represented to the plaintiffs that it would not copy or attempt to imitate in any manner, the model and chassis design of the cassette recorder players furnished by the plaintiffs to the defendant, and that the model manufactured by the defendant would be for the exclusive and permanent use of the plaintiff AUTOMATIC, and that no similar and/or associated model would be offered to other persons or companies without the express written consent of AUTOMATIC.

23. In reliance upon these warranties and representations the plaintiffs ordered from and paid the defendant for 13,000 cassette recorder players of the type hereinbefore described.

24. The defendant breached the warranties and representations made to the plaintiffs by manufacturing, advertising and selling in direct competition with the plaintiffs, cassette recorder players so similar in design to the model made for the exclusive and permanent use of the plaintiff AUTOMATIC as to be practically identical thereto.

25. By reason of the breach of warranties made by the defendant to the plaintiffs herein, the plaintiff has suffered and will continue to suffer minimum damages in the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded the plaintiffs as and for damages on the subsequent causes of action herein-after alleged.

AS AND FOR A THIRD CAUSE OF
ACTION ON BEHALF OF THE
PLAINTIFFS

26. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "1" through "19" inclusive and "22" through "24" inclusive in said complaint contained, as if same were fully set forth at length herein.

27. In order to induce the plaintiffs to enter into the initial and subsequent agreements of purchase of certain cassette recorder players from the defendant, and further, in order to obtain the model and chassis design for said cassette recorder players, the property of the plaintiffs, the defendant fraudulently and falsely warranted and represented to the plaintiffs that if the plaintiffs would order certain cassette recorder players of a model and chassis design to be furnished to the defendant by the plaintiffs, said defendant would manufacture such cassette recorder players for the exclusive and permanent use of the plaintiff AUTOMATIC, and that no similar and/or associated model would be offered to other persons or companies without the express written consent of the plaintiff AUTOMATIC.

28. The plaintiffs relying upon the said warranties

and representations, and believing them to be true, entered into an agreement with the defendant wherein and whereby the model and chassis design was furnished to the defendant together with the orders for 13,000 cassette recorder players.

29. The defendant knew these warranties and representations were false and fraudulent when made to the plaintiffs, made them solely for the purpose of obtaining the model and chassis design, the property of the plaintiffs, and to induce the plaintiffs to purchase 13,000 of these cassette recorder players.

30. Had the plaintiffs known that the warranties and representations hereinbefore alleged were false and fraudulent, it would not have furnished the defendant with copies of its model and chassis designs nor would it have ordered any cassette recorder players from the defendant.

31. In truth and in fact, the defendant at the time of making the false and fraudulent warranties and representations to the plaintiffs did so with full knowledge that the defendant would then engage in copy-

ing, manufacturing, advertising and selling a similar model of cassette recorder players to the public and at a price lower than the plaintiffs could sell such product and still realize a profit.

32. By reason of the fraud of the defendant as herein alleged, the plaintiff AUTOMATIC has suffered damages in the minimum sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded the plaintiffs as and for damages of the subsequent causes of action hereinafter alleged.

AS AND FOR A FOURTH CAUSE OF
ACTION ON BEHALF OF THE
PLAINTIFFS

33. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "1" through "19" inclusive, "22" through "24" inclusive and "27" through "32" inclusive in said complaint contained, as if same were fully set forth at length herein.

34. The false and fraudulent warranties, representations and statements made by the defendant to the plain-

tiffs were done so wilfully, with malice aforethought, and were wilful and maliciously made with the intent of defrauding the plaintiffs herein, by obtaining the chassis, model, style and design of the cassette recorder player belonging to the plaintiffs, by inducing the plaintiffs to enter into an agreement with the defendant, and by further inducing the plaintiffs to purchase a minimum of 13,000 cassette recorder players.

35. By reason of the wilful and malicious fraud of the defendant, the plaintiffs have sustained and will sustain damages in treble the amount of \$1,545,050.00, plus treble the additional sums as may be appropriately awarded the plaintiffs as and for the other causes of actions alleged in this complaint.

AS AND FOR A FIFTH CAUSE OF
ACTION ON BEHALF OF THE
PLAINTIFFS

36. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "1" through "19" inclusive, "22" through "24" inclusive and "27" through "32" inclusive

in said complaint contained, as if same were fully set forth at length herein.

37. Plaintiffs seek this Court to enjoin and restrain the defendant from further engaging in competition with the plaintiffs herein and that the defendant CROWN be enjoined and restrained by this Court from manufacturing, offering to sell, selling, advertising, circulating brochures, pamphlets and other display materials for the cassette recorder player similar and associated in design with the cassette recorder player of the chassis, model, style and design of the recorder player manufactured and sold to the plaintiffs herein and which cassette recorder players the defendant had agreed would be manufactured for and sold exclusively to plaintiffs and further that the defendant be enjoined and restrained from dealing with any of its distributors in the manufacture, production and sale of such cassette recorder players to such distributors as well as to other persons, firms, associations, corporations or partnerships, other than to the plaintiffs herein.

38. The plaintiffs have no adequate remedy at law

to prevent the continuing irreparable harm to the plaintiffs.

AS AND FOR A SIXTH CAUSE OF
ACTION ON BEHALF OF THE
PLAINTIFFS

39. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "1" through "19" inclusive, "22" through "24" inclusive and "27" through "32" inclusive in said complaint contained, as if same were fully set forth at length herein.

40. Prior to and at or about the time that the defendant was making deliveries to the plaintiffs on their purchases of approximately 13,000 cassette recorder players as hereinbefore alleged, the said defendant began to manufacture a similar and associated model of cassette recorder player and to offer same for sale in direct competition with the plaintiffs, at a price lower than that paid for said cassette recorder players by the plaintiff.

41. Upon information and belief, the defendant has

manufactured for and sold to persons other than the plaintiffs, thousands of cassette recorder players similar and associated in design to the cassette recorder players of the plaintiffs as hereinbefore alleged.

42. The exact number of the cassette recorder players sold to persons other than the plaintiffs herein is unknown to the plaintiffs, and an accounting is necessary to determine the precise extent of the benefits and profits derived by the defendant and the losses in moneys, profits and good will sustained by the plaintiffs, through the acts and transactions hereinabove alleged.

43. The plaintiffs have no adequate remedy at law to determine the extent of the damages by them sustained.

WHEREFORE, plaintiffs pray for judgment as follows:

a) On the First Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

b) On the Second Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

c) On the Third Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

d) On the Fourth Cause of Action, treble the sum of \$1,545,050.00, plus treble such additional sums as may be appropriately awarded.

e) On the Fifth Cause of Action, for a permanent injunction restraining and enjoining the said defendant from manufacturing, selling, distributing, advertising and offering for sale cassette recorder players of a type similar or associated with the type manufactured for the plaintiffs herein.

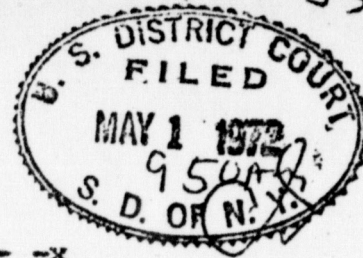
f) On the Sixth Cause of Action, for an accounting by the defendant as to the number of cassette recorder players manufactured, sold, offered for sale and distributed, and the profits realized by the defendant therefrom.

together with the costs and disbursements of this action and interest from the date of accrual of each action and such reasonable attorneys fees as this Court may allow in its discretion where applicable and such other and further relief as this Court may deem proper in the premises.

s/ Daniel Rosen
 DANIEL ROSEN
 Attorney for Plaintiffs
 30 Broad Street
 New York, New York 10004

EXHIBIT B - DECISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

-v-

CROWN RADIO CORP.,

Defendants.
-----X

71 CIV. 267

38454

APPEARANCES

DANIEL ROSEN
30 Broad Street
New York, New York 10004

Of Counsel: Marvin R. Javitz

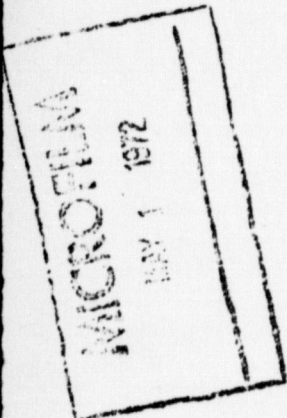
Attorneys for Plaintiffs

WHITMAN & RANSOM
522 Fifth Avenue
New York, New York 10036

Of Counsel: Dugald C. Brown
James S. Morris

Attorneys for Defendant.

CONSTANCE BAKER MOTLEY, D. J.



EXHIBIT

Memorandum Decision on Motion to Dismiss
And Order

72a

This is a motion by defendant Crown Radio Corp. (Crown) pursuant to Rule 12(b)(2) and (5) of the Federal Rules of Civil Procedure to dismiss the complaint of Automatic Radio Mfg. Co., Inc. (Automatic) and its wholly-owned subsidiary, Merit International Corp. (Merit) on the grounds that this court lacks in personam jurisdiction over it and, alternatively, on the grounds that service of process was insufficient.

As to the issue of in personam jurisdiction, defendant, a Japanese corporation, claims that it is not "present" in New York within the meaning of the cases under the New York jurisdictional statute, New York Civil Practice Law and Rules (N.Y.C.P.L.R.) § 301 (McKinney's 1972) either directly or through its agents and, consequently, is not subject to suit here. Defendant's alternative contention is that service of process effected by plaintiffs on (1) Ellis G. Rosen, claimed by plaintiffs to be the New York representative of Crown, (2) the New York Secretary of State, and (3) Shigeharu Sakuma, president of Crown, in Tokyo, Japan, was not sufficient to confer jurisdiction over Crown.

This motion to dismiss grows out of ^{an} action against Crown for breach of contract and of warranty, and for fraud.

in connection with agreements by Crown to manufacture a total of 13,000 units of a particular type of cassette recorder player with attachments for Merit, as purchasing agent for Automatic. Both plaintiffs are Massachusetts corporations and jurisdiction in this Court is based solely on diversity of citizenship. The type of recorder player in question was to be manufactured for Automatic exclusively, and according to Automatic's specifications and model design, for a total purchase price of \$831,890. Plaintiffs allege that at the same time defendant was filling plaintiffs' order, defendant was manufacturing additional substantially identical recorder player units which it was distributing and selling through its own overseas offices, including its New York office, ^{2/} for its own account, and at a price substantially lower than that quoted by Automatic to its customers. ^{3/} Plaintiffs claim that this action constituted a breach of the exclusivity clause of their agreement with defendant. They also claim fraud in the inducement, and breach of warranty by Crown in connection with the contract for the recorder players.

In determining whether there is in personam jurisdiction over the defendant we must apply the constitutionally valid law of the forum state. Scanapico v. Richmond, Fredericksburg and Potomac Railroad, 439 F.2d 17 (2d Cir. 1970); Gelfand v. Tanner Motor Tours, Ltd., 385 F.2d 119 (2d Cir. 1967); Arrowsmith

74a

v. United Press International, 320 F.2d 219 (2d Cir. 1963). That law is set forth in N.Y.C.P.L.R. § 301 (McKinney's 1972) which states merely that the existing jurisdictional law of the state will remain in force. As set forth in the New York cases, the prevailing rule of law is that a New York court may exercise jurisdiction over a foreign corporation if the foreign corporation is engaged in such a systematic and continuous course of "doing business" in the state that it may be considered to be "present" within this jurisdiction.^{4/} However, "mere solicitation" of business within the jurisdiction is not sufficient to create presence. Delagi v. Volkswagenwerk Ag of Wolfsburg, Germany, 29 N.Y.2d 426, 328 N.Y.S.2d 653 (1972); Miller v. Surf Properties, Inc., 4 N.Y.2d 475, 176 N.Y.S.2d 318, 151 N.E.2d 874 (1958).

Presence must be determined on the facts of the individual case, Gelfand v. Tanner Motor Tours, Ltd., 339 F.2d 317, 323 (2d Cir. 1964); Blount v. Peerless Chems. (P.R.), Inc., 316 F.2d 695 (2d Cir. 1963), cert. denied, 375 U.S. 831 (1963); Tokyo Bocki (U.S.A.) Inc. v. SS Navarino, 324 F.Supp. 361 (S.D. N.Y. 1971); on the facts alleged here, defendant's motion to dismiss must be granted.

In support of defendant's motion to dismiss on the grounds that it is not present in New York, it has submitted the affidavit of Ellis G. Rosen, one of the parties served by

plaintiffs. Rosen affirms that he is the president of Ellis G. Rosen, Ltd., a New York corporation located at 147 West 46th Street in Manhattan. Plaintiffs point out in the affidavit of Housman* that this is the same address as that listed for "Crown Radio Corp." in the Manhattan Telephone Directory.^{5/} Rosen states that he is a manufacturer's representative for "Crown San Francisco," among other firms.^{6/} According to Rosen, he solicits orders for "Crown San Francisco," subject to their approval by "Crown San Francisco," in return for a commission.

The relationships of "Crown San Francisco," referred to by Rosen, and Crown, the defendant, is explained in the affidavit of Kazunaka Uesugi, vice president and treasurer of "Crown San Francisco," submitted by defendant. Kazunaka's affidavit maintains that "Crown Radio Corp.", as it is referred to by defendant, and in the Manhattan Telephone Directory, is not the defendant named in this action, but is a corporation organized under the laws of New York,^{7/} with its base of operations in San Francisco. Approximately seventy-five percent of its stock is owned by the defendant Crown. We shall refer to this corporation as "Crown San Francisco."

Defendant distinguishes Crown San Francisco from itself by referring to itself as "Crown Kabushiki Kaisha" or "Crown-KK", which is merely the Japanese-language equivalent

*David Housman, Chairman of the⁵ Board of Automatic.

of "Crown Corporation." ^{8/a} Differentiating itself from the ^{76a}
San Francisco organization by using the Japanese translation
of its name, defendant argues, through the affidavit of Kazunaka,
that "To the best of my knowledge, the defendant herein, CROWN-KK,
has never done business in New York, and is not licensed or
authorized to do so. It does not maintain and never has main-
tained any office, place of business, telephone listing, mailing
address, bank account, warehouse or inventory in New York and
no officers, directors or employees of CROWN-KK are domiciled or
residing in New York. In addition, it does not own or lease any
real property in New York and does not advertise its products
in that state." (Affidavit of Kazunaka Uesugi at p. 2, ¶ 5).

The conclusion of Kazunaka's affidavit, at p. 3, ¶ 9,
asserts that "... Ellis G. Rosen is not an agent for CROWN-SAN
FRANCISCO and CROWN SAN-FRANCISCO is not an agent for CROWN-KK
so as to render CROWN-KK subject to the jurisdiction of this
Court."

* It should be noted that the letterhead of Crown's stationery
reads "Crown Radio Corporation. . . Tokyo." (emphasis added.)
See Exhibits B, B1, B2, and D appended to Plaintiffs' Affidavits.

Thus, defendant asserts that Rosen does no business with Crown, that Rosen acts as an independent contractor for Crown San Francisco, and that Crown San Francisco is not an agent for Crown.

Defendant has submitted no affidavits of personnel of Crown itself, nor has it given any reason for not supplying such affidavits. The affidavit of Kazunaka appended to defendant's papers has no probative value whatsoever with regard to the business activities of Crown in New York since, on defendant's own representation, Crown San Francisco, of which Kazunaka is an officer, has nothing to do with defendant Crown's business in New York.. Thus Kazunaka makes affirmations concerning matters not within his own knowledge. Our decision to grant defendant's motion, then, is based entirely on plaintiffs' failure to make a prima facie showing of grounds for in personam jurisdiction here.

Plaintiffs' claim is not that Rosen is the agent for Crown San Francisco which is, in turn, the agent for Crown but, rather, that Rosen is agent for Crown directly, and that both Crown San Francisco, and Rosen in New York are overseas offices of Crown. Thus for plaintiffs to prevail on this motion they must show that Rosen was in fact doing business in New York, and that he acted as agent for Crown in doing that business.

In point of fact, at the foot of defendant's stationery on which it communicated with plaintiffs, both San Francisco and New York are listed as locations of "Overseas Offices." See Plaintiffs' Exhibits: B, B1, B2, and D.

Moreover, plaintiffs state that Crown indicated to them that it had a New York office headed by Rosen, and that Rosen would take care of any problems they might have with regard to shipment or repair of the recorder player units involved here. However, there is no allegation that Rosen offered to, or in fact performed any such services. The Second Circuit has held that New York appears to have no doctrine of jurisdiction by estoppel, Gelfand v. Tanner Motor Tours, Ltd., 339 F.2d 317, 320-321 (2d Cir. 1964)^{9/} so that we cannot hold defendant to be bound by its alleged representations of doing business in New York made to plaintiffs, absent some showing that it was, in fact, doing business in this jurisdiction.

Plaintiffs have failed to show anything more than mere solicitation with respect to the activities actually carried on by Ellis Rosen in New York on behalf of either Crown or Crown San Francisco. Miller v. Surf Properties, Inc., 4 N.Y.2d 475, 176 N.Y.S.2d 318, 151 N.E.2d 874 (1958). As to the contract in issue here, it was negotiated entirely in Japan. There are no allegations by plaintiffs of meetings in New York with

representatives of defendant -- the extent of plaintiffs' contention in this regard is that plaintiffs were able on one occasion to contact Crown's personnel by calling Ellis Rosen's office in New York. Plaintiffs mention in their brief without further amplification that the allegedly pirated recorder player sold by defendant to its customers were sold in New York, among other places. However, this bald allegation alone is not sufficient to confer jurisdiction on New York courts. ^{10/}

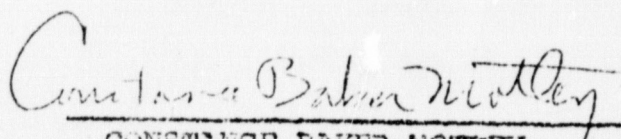
Submission of supplemental affidavits, followed by a hearing, may bring out further jurisdictional facts. Arrowsmith v. United Press International, supra, at p. 234. The complaint is therefore dismissed unless, within 20 days from the date of this order, plaintiffs have filed and served sufficient supplemental affidavits.

We need not consider the alternative ground for dismissal urged by defendant at this time.

Dated: New York, New York

April 26, 1972

SO ORDERED


CONSTANCE BAKER MOTLEY
U.S.D.J.

1. Rule 12(b)(2) and (5) of the Federal Rules of Civil Procedure provides that:

"Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

* * *

(2) lack of jurisdiction over the person,

* * *

(5) insufficiency of service of process,

....."

2. Although plaintiffs assert repeatedly in their brief that sales of pirated recorder players were made by Crown in New York, this allegation is not supported by any affidavit. Nor do plaintiffs allege what the volume of sales was, or whether the sales were made by Rosen in New York, or by Crown in Japan, for delivery in New York. See Plaintiffs' Brief at pp. 3, 9, 10-11; Rosen*Affidavit, p. 5, § 9.
3. It is also alleged that some of Crown's customers were the very same individuals that Automatic was attempting to sell recorder players to.

*-----

- i -

Daniel Rosen, Plaintiffs' attorney.

4. Frummer v. Hilton Hotels International, Inc., 19 N.Y.2d 533, 537, 281 N.Y.S.2d 41, 43-44, 227 N.E.2d 851 (1967), cert. denied, 389 U.S. 923 (1967). Simonson v. International Bank, 14 N.Y.2d 281, 251 N.Y.S.2d 433, 200 N.E.2d 427 (1964); Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 267, 115 N.E.2d 917 (1917).

We do not consider New York's long arm statute, N.Y.C.P.L.R. § 302 (McKinney's 1972), since plaintiffs do not claim jurisdiction under that section, and since we do not think it is applicable to the facts alleged here.

5. Affidavit of David Housman, at p. 3 78.
6. Ellis Rosen's affidavit ambiguously states at p. 1, ¶2 that:

"My firm acts as a manufacturers representative for several firms in the New York area, including James B. Lansing Co., a hi-fidelity speakers and components manufacturer, Bright Co., a manufacturer of environmental lighting and Crown Radio Corporation, a California based corporation, not the defendant herein, (hereinafter "Crown San Francisco"). " (Emphasis added)

This statement is not inconsistent with Rosen being a manufacturer's representative for Crown, the defendant, as well as the firms named.

7. Crown San Francisco, being incorporated in New York State, is held by the New York Business Corporation Law § 304(a), (b) (McKinney's 1963) to have designated the

7 cont'd

New York Secretary of State to accept service of process. Having invoked the protection of New York law by incorporating here, it is subject to New York law, and can be sued in this jurisdiction. Pennover v. Neff, 95 U.S. 714 (1877); H. Wachtell, New York Practice Under the CPLR 26, §2 (1970); 2 Moore ¶ 4.25 [2.-1], p. 1148. However, Crown San Francisco is not named as a defendant in this action and, unless plaintiff can pierce the corporate veil between Crown San Francisco and Crown, the defendant, or show an agency relationship between the two corporations, Crown San Francisco's amenability to suit in this jurisdiction will not aid plaintiffs' case. See Frummer v. Hilton Hotels International, Inc., supra; Taca International Airlines, S.A. v. Rolls-Royce, Ltd., 15 N.Y.2d 97, 256 N.Y.S.2d 129, 204 N.E.2d 329 (1965); Tokyo Boeki (U.S.A.), Inc. v. SS Navarino, supra; But see Delagi v. Volkswagenwerk Ag of Wolfsburg, Germany, supra.

8.

Senseido's Japanese-English Dictionary (Pocket Edition).

9.

See Miller v. Surf Properties, Inc., supra; MacInnes v. Fontainebleau Hotel Corp., 257 F.2d 832 (2d Cir. 1958). See also International Business Machines Corp. v. Barrett Div. Allied Chemical & Dye Corp., 16 A.D.2d 487, 229 N.Y.S.2d 547 (1962); Rochester Happy House, Inc. v. Happy House Shops, Inc., 14 A.D.2d 491, 217 N.Y.S.2d 791 (1961);

FOOTNOTES

9. cont'd

N.Y.C.P.L.R. Practice Commentary § C 301:6, p. 18. But see Farmingdale Steer-Inn, Inc. v. Steer Inn Realty Corp., 51 Misc.2d 986, 274 N.Y.S.2d 379 (1966) (defendant represented in writing, in a contract with plaintiff, that it was authorized to do business in New York; court held jurisdiction by estoppel).

10.

See footnote 2, supra.

EXHIBIT C - ORDER AND JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - -x

AUTOMATIC RADIO MFG. CO., INC.
and MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION,

Defendant.

- - - - -x

USDC
Filed
June 6, 1972
SDNY CS

Order & Judgment

71 CIV. 267

The above-named defendant, having moved this Court pursuant to Rule 12b(2) and (5) of the Federal Rules of Civil Procedure for an order dismissing plaintiffs' complaint for lack of jurisdiction over the person and insufficiency of service of process and said motion having regularly come on to be heard before this Court on the 20th day of April, 1971,

NOW, upon reading and filing the affidavit of Kazunaka Uesugi, sworn to the 18th day of March, 1971, and the affidavit of Ellis G. Rosen, sworn to the 11th day of March, 1971, in support of defendant's motion,

the affidavit of David Housman, sworn to the 13th day of April, 1971, the affidavit of Frank M. Housman, sworn to the 13th day of April, 1971, and the affidavit of Daniel Rosen, sworn to the 14th day of April, 1971, all in opposition to defendant's motion, and the reply affidavit of Dugald Campbell Brown, sworn to the 19th day of April, 1971, in support of defendant's motion, and upon all the papers and proceedings heretofore had herein, and after hearing Dugald Campbell Brown, Esq. of Whitman & Ransom, attorneys for defendant, in support of said motion, and Daniel Rosen, Esq., attorney for plaintiffs, in opposition thereto, and the Court having rendered its decision in writing on April 28, 1972 dismissing plaintiffs' complaint upon the ground of lack of jurisdiction over the person unless within twenty days from the date thereof plaintiffs should file and serve sufficient supplemental affidavits and no such affidavits having been filed and served pursuant to the Court's decision, it is

ORDERED, that plaintiffs' complaint be, and the same hereby is, dismissed pursuant to Rule 12b(2) of

•

the Federal Rules of Civil Procedure, and it is further
ORDERED, that the Clerk of this Court be, and he
hereby is, directed to enter judgment dismissing plain-
tiffs' complaint with costs and disbursements, and that
defendant have execution therefor.

SO ORDERED:

N.Y., N.Y.

June 6, 1972

s/ Constance Baker Motley
U.S.D.J.

Judgment Entered June 7, 1972

s/ John Livingston
Clerk

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

72 Civ. 486A

AUTOMATIC RADIO MFG. CO., INC., and
MERIT INTERNATIONAL CORP.,

Plaintiff

v.

SUMMONS

CROWN RADIO CORPORATION (JAPAN) and
CROWN RADIO CORPORATION (NEW YORK)

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon

DANIEL ROSEN,

plaintiff's attorney, whose address is 30 Broad Street, New York, New York 10004

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

John Livingston

Clerk of Court.

E. A. Becker

Deputy Clerk.

Date

Nov. 15, 1972

[Seal of Court]

NOTICE - This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

-----X
AUTOMATIC RADIO MFG. CO., INC., and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

CIVIL ACTION

NO. 72 Civ 4664

against

COMPLAINT

CROWN RADIO CORPORATION (JAPAN) and
CROWN RADIO CORPORATION (NEW YORK),

Defendants.
-----X

AUTOMATIC RADIO MFG., CO., INC., and MERIT INTERNATIONAL
CORP., by their attorney, DANIEL ROSEN, complaining of the defendants
CROWN RADIO CORPORATION (JAPAN) and CROWN RADIO CORPORATION
(NEW YORK) respectfully allege:

PARTIES AND JURISDICTION

1. At all of the times herein mentioned, AUTOMATIC RADIO MFG. CO.,
INC., (hereinafter referred to as "AUTOMATIC"), was and is a corporation
organized and existing under the laws of the State of Massachusetts and having
its principal place of business in the State of Massachusetts. AUTOMATIC
is engaged in the business, among others, of manufacturing and selling radios,
stereophonic outfits, record players, tape recorders, cassette recorder play-
ers and electronic equipment.

2. At all of the times herein mentioned, MERIT INTERNATIONAL CORP.
(hereinafter referred to as "MERIT"), was and is a corporation organized and
existing under the laws of the State of Massachusetts and having two principal
places of business, one in the State of Massachusetts, the other in Tokyo,
Japan. MERIT is a wholly owned subsidiary of AUTOMATIC and is engaged in

the business of being the purchasing agent for AUTOMATIC exclusively.

3. Upon information and belief, that CROWN RADIO CORPORATION (JAPAN), (hereinafter referred to as "CROWN JAPAN"), was and is a Japanese corporation conducting business under the name of CROWN RADIO CORPORATION, and maintaining offices in Tokyo, New York, San Francisco, Panama, Colon, Dusseldorf and London. It is engaged in the business, among others, of manufacturing and selling radios, stereophonic equipment, tape recorders, cassette recorder players and similar items.

4. CROWN RADIO CORPORATION (NEW YORK), (hereinafter referred to as "CROWN NEW YORK"), is a corporation organized and existing under and by virtue of the laws of the State of New York and presently maintaining an office in San Francisco, California.

5. Upon information and belief, CROWN NEW YORK was and still is a wholly owned subsidiary of CROWN JAPAN and the agent for the sales of CROWN JAPAN products in the United States. Such sales were made at all of the times hereinbefore mentioned by CROWN NEW YORK in the State of New York as well as in other areas of the United States.

6. This Court has jurisdiction over this claim by reason of the fact that the matter in controversy exceeds the sum of \$10,000.00, exclusive of costs and interest and by reason of the diversity of citizenship of the parties, (28 U.S.C. § 1332).

AS AND FOR A FIRST CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFFS
AGAINST THE DEFENDANTS.

7. In the early part of 1969, MERIT, acting as the purchasing agent for AUTOMATIC, and AUTOMATIC through its officers and other representatives entered into negotiations in Japan, Massachusetts and New York with CROWN

JAPAN for the manufacture of certain cassette recorder players, together 90a
with blank cassettes, microphones and other equipment.

8. The plaintiffs and the defendant CROWN JAPAN then entered into an agreement wherein and whereby CROWN JAPAN agreed to manufacture the aforementioned cassette recorder players with equipment, for AUTOMATIC and MERIT, according to certain specifications and designs to be submitted by the plaintiffs.

9. In accordance with the agreement, AUTOMATIC furnished to CROWN JAPAN its chassis design for the model so ordered for plaintiffs.

10. In order to protect its chassis design, styling and physical and mechanical set-up and appearance of the cassette recorder player, AUTOMATIC and MERIT insisted that CROWN JAPAN manufacture such equipment exclusively for AUTOMATIC and MERIT, and limit the manufacture and sale of said products to AUTOMATIC and MERIT.

11. CROWN JAPAN agreed it would limit its manufacture, sales and production of the cassette recorder player of such design, styling, physical and mechanical set-up and appearance to the plaintiffs if the plaintiffs would place an order for such equipment with CROWN JAPAN.

12. CROWN JAPAN further agreed with the plaintiffs that it would not nor would it permit its subsidiary or agent CROWN NEW YORK to solicit orders or make any sales of similar products manufactured and sold to the plaintiffs by CROWN JAPAN, to any other person, firm or corporation, anywhere in the world.

13. On or about May 8, 1969, MERIT, acting as agent for AUTOMATIC, placed an order with CROWN JAPAN for 10,000 cassette recorder players, as hereinbefore described. The cost per unit was \$56.22, ex-factory for a total purchase price of \$562,200.00. The cost of shipping and delivery to AUTO-

MATIC raised the cost per unit to \$65.81, making the total purchase price of the 10,000 cassette recorder players \$658,100.00.

14. In accordance with the agreement between the parties hereto, the purchase order of MERIT, acting on behalf of AUTOMATIC, contained the following endorsement on the fact thereof:

"This model is for the exclusive and permanent use for Automatic Radio only. No similar and/or associated model shall be offered to other persons or companies without the express written consent of Automatic Radio."

15. The purchase order was accepted by CROWN JAPAN pursuant to the terms and provisions hereinbefore alleged and the merchandise was shipped by CROWN JAPAN to the plaintiffs and paid for by the said plaintiffs.

16. On or about October 31, 1969, in further reliance upon the terms, conditions and provisions of the agreement between the plaintiffs and CROWN JAPAN as hereinbefore alleged, the plaintiffs ordered an additional 3,000 units of the cassette recorder players with European voltage plug adaptors, at a price of \$57.93 per unit, for a total cost of \$173,790.00, F.O.B., Tokyo, Japan.

17. The aforesaid merchandise was shipped by CROWN JAPAN to the plaintiffs and was fully paid for by said plaintiffs.

18. The plaintiffs received ultimate delivery of the 13,000 cassette recorder players ordered from CROWN JAPAN, commencing in November of 1969, up to and including May of 1970.

19. Thereafter, and in or about May of 1970, CROWN JAPAN and its subsidiary and agent CROWN NEW YORK introduced cassette recorder players for sale to the public through their sales offices located in Tokyo, New York,

San Francisco, Panama, Colon, Dusseldorf and London, as well as to distributors and sales agencies throughout the world. These cassette recorder players were so close in design and appearance, and so similar to the cassette recorder players manufactured by the defendant CROWN JAPAN for the plaintiffs from the plaintiffs' own design, as to be practically identical thereto.

20. The aforesaid acts of the defendants constituted a breach of the agreement between the plaintiffs and defendants, and more particularly the provisions to manufacture, solicit orders and make sales of the models which were to be manufactured and sold exclusively to the plaintiffs for the permanent use of the plaintiff AUTOMATIC and not to solicit orders, manufacture or make sales to any other persons or companies of any similar or associated models without the express written consent of the plaintiff AUTOMATIC.

21. Immediately upon learning that the defendants had breached their agreement with the plaintiffs, the plaintiffs offered to return all unsold cassette recorder players manufactured and sold by the defendants to the plaintiffs. The defendants refused to accept the tender of said merchandise and have continued to manufacture, solicit and make sales and advertise the cassette recorder players to the general public, and particularly within the State of New York, as hereinbefore alleged.

22. Although the defendants were aware that the plaintiff AUTOMATIC was selling these cassette recorder players at the wholesale price of \$99.95 without speakers, the defendants offered the same cassette recorder player to the identical customers to whom plaintiffs were attempting to sell the cassette recorder players at a price of \$77.90 per unit including speakers, thus depriving the plaintiffs of any possibility of being able to make a sale of these cassette recorder players, except at a loss to the plaintiffs.

23. By reason of the foregoing, the plaintiffs have suffered damages in the minimum sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded the plaintiffs as and for damages on the subsequent causes of action hereinafter alleged.

24. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated " 7 " through "22 " inclusive in said complaint contained, as if same were fully set forth at length herein.

25. Early in 1969, at the time of the negotiations between the plaintiffs and the defendants resulting in the series of agreements between said plaintiffs and defendants for the purchase of certain cassette recorder players manufactured by the defendant CROWN JAPAN and sold by the defendant CROWN JAPAN and its subsidiary and agent CROWN NEW YORK, the said defendants warranted and represented to the plaintiffs that they would not copy, attempt to imitate in any manner the model and chassis design of the cassette recorder players hereinbefore described, that the model manufactured by the defendant CROWN JAPAN would be for the exclusive and permanent use of the plaintiff AUTOMATIC that no similar and/or associated model would be offered to other persons or companies, nor would the defendant CROWN JAPAN or its subsidiary and agent the defendant CROWN NEW YORK advertise, solicit orders or sell the aforementioned products to other persons or companies without the written consent of AUTOMATIC.

26. In reliance upon these warranties and representations the plaintiffs ordered from and paid the defendant CROWN JAPAN for 13,000 cassette recorder players of the type hereinbefore described.

27. The defendants breached the warranties and representations made to the plaintiffs by manufacturing, advertising, soliciting orders, and selling in direct competition with the plaintiffs in the State of New York, other areas of the United States, and in a foreign countries, cassette recorder players so

similar in design to the model made for the exclusive and permanent use of the plaintiff AUTOMATIC as to be practically identical thereto.

28. By reason of the breach of warranties made by the defendants to the plaintiffs herein, the plaintiffs have suffered and will continue to suffer minimum damages in the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded the plaintiffs as and for damages on the subsequent causes of action hereinafter alleged.

AS AND FOR A THIRD CAUSE OF
ACTION ON BEHALF OF THE PLAIN-
TIFFS AGAINST THE DEFENDANTS.

29. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated " 7 " through " 22 " inclusive and " 24 " through " 27 " inclusive in said complaint contained, as if same were fully set forth at length herein.

30. In order to induce the plaintiffs to enter into the initial and subsequent agreements of purchase of certain cassette recorder players from the defendants, and further, in order to obtain the model and chassis design for said cassette recorder players, the property of the plaintiffs, the defendant CROWN JAPAN fraudulently and falsely warranted and represented to the plaintiffs that if the plaintiffs would order certain cassette recorder players of a model and chassis design to be furnished to the defendants by the plaintiffs, said CROWN JAPAN would manufacture such cassette recorder players for the exclusive and permanent use of the plaintiff AUTOMATIC, and that no similar and/or associated model would be offered to other persons or companies without the express written consent of the plaintiff AUTOMATIC, by CROWN JAPAN or its subsidiary and agent CROWN NEW YORK.

31. The plaintiffs relying upon the said warranties and representations and believing them to be true, entered into an agreement with the defendants wherein and whereby the model and chassis design was furnished to the defendants together with the orders for 13,000 cassette recorder players.

32. The defendants knew these warranties and representations were false and fraudulent when made to the plaintiffs, made them solely for the purpose of obtaining the model and chassis design, the property of the plaintiffs, and to induce the plaintiffs to purchase 13,000 of these cassette recorder players.

33. Had the plaintiffs known that the warranties and representations hereinbefore alleged were false and fraudulent, it would not have furnished to the defendants with copies of its model and chassis designs nor would it have ordered any cassette recorder players from the defendants.

34. In truth and in fact, the defendants at the time of making the false and fraudulent warranties and representations to the plaintiffs did so with full knowledge that the defendants would then engage in copying, manufacturing, advertising, soliciting orders and selling a similar model of cassette recorder players to the public and at a price lower than the plaintiffs could sell such product and still realize a profit.

35. By reason of the fraud of the defendants as herein alleged, the plaintiff AUTOMATIC has suffered damages in the minimum sum of \$1,545,050.00 plus such additional sums as may be appropriately awarded the plaintiffs as and for damages of the subsequent causes of action hereinafter alleged.

AS AND FOR A FOURTH CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFFS
AGAINST THE DEFENDANTS

36. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "7" through "22" inclusive

"24" through "27" inclusive and "30" through "34" inclusive in said complaint contained, as if same were fully set forth at length herein.

37. The false and fraudulent warranties, representations and statements made by the defendants to the plaintiffs were done so wilfully, with malice aforethought, and were wilfully and maliciously made with the intent of defrauding the plaintiffs herein, by obtaining the chassis, model, style and design of the cassette recorder player the property of the plaintiffs, by inducing the plaintiffs to enter into an agreement with the defendants, and by further inducing the plaintiffs to purchase a minimum of 13,000 cassette recorder players while the said defendants at all such times planned to copy the chassis, model, style and design thereof and manufacture and sell said cassette recorder players to others without the written consent of the plaintiffs and to advertise and solicit orders for the sale of said products in the United States, and more particularly within the State of New York.

38. By reason of the wilful and malicious fraud of the defendants, the plaintiffs have sustained and will sustain damages in treble the amount of \$1,545,050.00, plus treble the additional sums as may be appropriately awarded the plaintiffs as and for the other causes of actions alleged in this complaint.

AS AND FOR A FIFTH CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFFS
AGAINST THE DEFENDANTS

39. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "7" through "22" inclusive, "24" through "27" inclusive and "30" through "34" inclusive in said complaint contained, as if same were fully set forth at length herein.

40. Plaintiffs seek this Court to enjoin and restrain the defendants from

further engaging in competition with the plaintiffs herein and that the defendants be enjoined and restrained by this Court from manufacturing, offering to sell, selling, advertising, circulating brochures, pamphlets and other display materials for the cassette recorder player similar and associated in design with the cassette recorder player of the chassis, model, style and design of the recorder player manufactured and sold to the plaintiffs herein and which cassette recorder players the defendants had agreed would be manufactured for and sold exclusively to plaintiffs and further that the defendants be enjoined and restrained from dealing with any of its distributors in the manufacture, production and sale of such cassette recorder players to such distributors as well as to other persons, firms, associations, corporations or partnerships, other than to the plaintiffs herein.

41. The plaintiffs have no adequate remedy at law to prevent the continuing irreparable harm to the plaintiffs.

AS AND FOR A SIXTH CAUSE OF
ACTION ON BEHALF OF THE PLAINTIFFS
AGAINST THE DEFENDANTS

42. The plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated and enumerated "7" through "22" inclusive, "24" through "27" inclusive and "30" through "34" inclusive in said complaint contained, as if same were fully set forth at length herein.

43. Prior to and at or about the time that the defendants were making deliveries to the plaintiffs on their purchases of approximately 13,000 cassette recorder players as hereinbefore alleged, the said defendants began to manufacture a similar and associated model of cassette recorder players and to offer same for sale in direct competition with the plaintiffs, at a price lower than that paid for said cassette recorder players by the plaintiffs.

44. Upon information and belief, the defendants have manufactured for and sold to persons other than the plaintiffs, thousands of cassette recorder players similar and associated in design to the cassette recorder players of the plaintiffs as hereinbefore alleged.

45. The exact number of the cassette recorder players sold to persons other than the plaintiffs herein is unknown to the plaintiffs, and an accounting is necessary to determine the precise extent of the benefits and profits derived by the defendants and the losses in moneys, profits and good will sustained by the plaintiffs, through the acts and transactions hereinabove alleged.

46. The plaintiffs have no adequate remedy at law to determine the extent of the damages by them sustained.

WHEREFORE, plaintiffs pray for judgment as follows:

a) On the First Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

b) On the Second Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

c) On the Third Cause of Action, the sum of \$1,545,050.00, plus such additional sums as may be appropriately awarded.

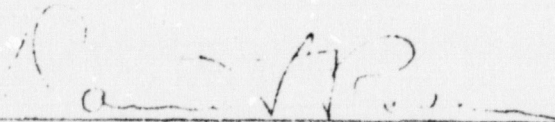
d) On the Fourth Cause of Action, treble the sum of \$1,545,050.00, plus treble such additional sums as may be appropriately awarded.

e) On the Fifth Cause of Action, for a permanent injunction restraining and enjoining the said defendants from manufacturing, selling, distributing, advertising and offering for sale cassette recorder players of a type similar or associated with the type manufactured for the plaintiffs herein.

f) On the Sixth Cause of Action, for an

accounting by the defendants as to the number of cassette recorder players manufactured, sold, offered for sale and distributed, and the profits realized by the defendants therefrom.

together with the costs and disbursements of this action and interest from the date of accrual of each action and such reasonable attorneys fees as this Court may allow in its discretion where applicable and such other and further relief as this Court may deem proper in the premises.



DANIEL ROSEN
Attorney for Plaintiffs
30 Broad Street
New York, New York 10004

SOUTHERN DISTRICT OF NEW YORK

AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION, (JAPAN)
and CROWN RADIO CORPORATION (NEW YORK)

Defendants.

72 CIV. 4864

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, May 3, 1974

DAVID HOUSMAN, being duly sworn, deposes and
says:

1. I am Chairman of the Board of Directors
of Automatic Radio Mfg. Co., Inc. and am fully familiar with
all of the transactions had between Automatic Radio Mfg. Co.,
Inc. ("Automatic Radio"), Merit International Corp. ("Merit"),
Crown Radio Corporation ("Japan"), hereinafter referred to as
Crown (Japan), and Crown Radio Corporation ("New York"), here-
inafter referred to as Crown (New York).

2. I respectfully submit this Affidavit in
opposition to the motion of the defendant, Crown (Japan), for
an order pursuant to Rule 12 b, 2 of the Federal Rules of
Civil Procedure dismissing the above-entitled action as against
the defendant upon the ground that this Court lacks jurisdiction
over the person of said defendant, and upon the further grounds
that a prior adjudication of this Court that it lacks in personam
jurisdiction over defendant is res judicata.

3. I have not delved into the question of res judicata since that question is covered by the Affidavit and Memorandum of Law of the attorney for the plaintiffs, Daniel Rosen, Esq., being submitted herewith as part of the papers in opposition to the instant motion.

4. At all of the times pertinent to the issues involved in this litigation, and to the present, Merit has been and is a wholly-owned subsidiary of Automatic Radio and has acted as purchasing agent for Automatic Radio in international commerce as well as in the United States.

5. As appears from the original complaint in this action, a copy of which is annexed to the moving papers of the defendant, Crown (Japan), and the present and second complaint served in this action, a copy of which is annexed hereto and designated as Exhibit "1", the negotiations between the plaintiffs and the defendant, Crown (Japan), commenced in or about the early part of 1969 and resulted in a course of dealings between the plaintiffs and said defendant up to and including May of 1970.

6. In the course of negotiations between the plaintiff and Crown (Japan), numerous telephone conversations were had between my office in Massachusetts and the office of Crown (Japan). Further, I made numerous visits to the offices and factory of Crown (Japan) in Japan; at which time I was accompanied by Frank M. Housman, the President of Merit, and John S. DeMetrick, the Vice President in charge of engineering of Automatic Radio. At these personal conferences, of which there were many, there were present, in addition to Messrs. Frank M. Housman, John S. DeMetrick, and myself, Mr. N. Miyabayashi in charge of foreign trade, a Mr. Miyahara, and Mr. R. Fujii.

These Japanese individuals were all official representatives of Crown (Japan).

7. In the conferences had with the representatives of Crown (Japan) and the plaintiff, certain warranties and representations were made to the plaintiffs by the aforesaid individuals representing Crown (Japan), and in reliance thereon, the plaintiffs entered into an agreement providing for the manufacture by Crown (Japan) of certain cassette recorder players together with blank cassettes, microphones, and other equipment. The agreement contained provisions that Automatic Radio would supply the chassis design for the model ordered by the plaintiff, but that said design, styling, physical and mechanical set-up and appearance of the cassette recorder players belonging to Automatic Radio would be protected, and that Crown (Japan) would manufacture such equipment exclusively for plaintiffs, limiting the manufacture and sale thereof to plaintiffs on an exclusive basis.

8. In accordance with the aforesaid agreement, the purchase order of Merit, the purchasing agent for Automatic Radio, contained the following endorsement on the face thereof:

"This model is for the exclusive and permanent use for Automatic Radio only. No similar and/or associated model shall be offered to other persons or companies without the express written consent of Automatic Radio."

9. Your deponent in the presence of Messrs. Frank M. Housman and John S. DeMetrick, questioned the representatives of Crown (Japan) as to assurances that could be given to Crown (Japan) to the plaintiffs that the aforementioned product to be purchased by the plaintiff would not be duplicated nor sold anywhere to any other person.

larly in the United States where most of the plaintiffs' products were sold.

10. The aforementioned representatives of Crown (Japan) stated that it maintained offices in the United States, particularly in New York and San Francisco, that it had a wholly-owned and controlled subsidiary corporation in the United States, that said corporation was a New York corporation formed for Crown (Japan), and that said corporation was the agent for the sale of products manufactured exclusively for Crown (Japan). Further warranties and representations made by Crown (Japan) were that Crown (New York), which they referred to as Crown Radio Corporation (New York), was not permitted by Crown (Japan) to sell any products except those manufactured by Crown (Japan), and that since Crown (Japan) had agreed not to manufacture or sell the products ordered by the plaintiffs, there could be no sale of these products anywhere in the United States, the only outlet for such products being Crown (New York). The said persons further stated that its control of Crown (New York) was absolute, that it owned all of the voting stock of Crown (New York), and had officers and directors of Crown (Japan) operating said corporation.

11. In reliance upon these representations made by Crown (Japan) and its agent, Crown (New York), the plaintiffs placed an initial order for 13,000 cassette recorder players amounting to \$658,100. This purchase order contained the restrictive endorsement hereinbefore referred to on the face thereof.

12. Thereafter, and on or about October 31, 1969, in further reliance on these warranties and representations

and provisions of the agreements made by the plaintiff, Crown (Japan), and its agent, Crown (New York), plaintiffs ordered an additional 3,000 units of the cassette recorder player for a total cost of \$173,790. All of these purchases were fully paid for by the plaintiffs.

13. Thereafter, and in or about May 1970, Crown (Japan) and its subsidiary and agent, Crown (New York) sold in New York and other cities in the United States, as well as in other parts of the world, cassette recorders which were so close in design and appearance and so similar to the cassette recorder players purchased by the plaintiffs as to be practically identical to the plaintiffs' own design, and which were not only in breach of agreement and warranties made to the plaintiffs, but were fraudulently prepared by Crown (Japan) for sale in New York and other states for the intent of perpetrating a fraud upon the plaintiffs.

14. Not only did the defendant, Crown (Japan), sell these recorder cassette players at a price far below the price for which the plaintiffs were compelled to sell these units, but by the acts of the defendant, Crown (Japan) and its agent, Crown (New York), the plaintiffs were deprived of being able to make sales of the cassette recorder players except at a loss to the plaintiffs.

15. At all of the times between the afore-said date in 1969 and May of 1970, your deponent was informed by the President of the defendant corporation that it maintained an office in New York for the conduct of its business, and that if the plaintiffs had any difficulty in connection with shipments, delivery of merchandise, or servicing of said merchandise, plaintiffs should contact the New York office of the defendant.

16. As late as April or May of 1970, these instructions were again repeated to your deponent by the defendant and your deponent was advised that the office of the defendant corporation in New York City was located at 147 West 46th Street in the Borough of Manhattan, City, County, and State of New York. Further, your deponent was informed by the defendant corporation that Mr. Ellis G. Rosen was the person in charge of the management of the New York office of the defendant and was fully empowered and had the necessary authority to act for the defendant in any and all matters pertaining to the transactions had between the plaintiffs and the defendant with the exception of technical engineering problems, which would have to be taken up with the engineering division of the defendant corporation located in Japan.

17. The fact of the matter is that on one occasion in February of 1971, your deponent placed a call to Crown Radio Corporation at 147 West 46th Street, New York, New York, telephone number: 586-0590. The telephone was answered by a gentleman who announced "Crown Radio Corporation." The telephone call was a person-to-person call to Mr. Ellis Rosen, but on being informed that Mr. Rosen was not in at that time, the telephone call was then cancelled.

18. At or about the latter part of June, 1970, Mr. N. Miyabavashi, who is Section 1 Chief Foreign Trade Department of Crown Radio, phoned your deponent from his San Francisco office and advised that he would be in his New York office the latter part of that week, and asked me to phone him; which I did for the purpose of arranging a meeting in Boston. This meeting was to discuss the problem Crown created by breach

of their agreements, and Mr. Miyabayashi made me promises to solve the problems and save Automatic Radio harmless; however, his undertakings were never complied with.

19. Annexed hereto and designated as Exhibits "2", "3", "4", and "5" are the letterheads and stationery of Crown (Japan) utilized by said corporation in its correspondence with the plaintiffs. Your deponent respectfully calls the attention of this Court to the fact that at the bottom of each letterhead is a notation that Crown (Japan) has an office in New York and San Francisco, as well as in foreign cities.

20. In substantiation of the restrictive endorsement on the purchase order, there are annexed hereto as Exhibits "6" and "7" purchase orders of the plaintiff containing such restrictive endorsement.

21. The Manhattan Telephone Directory for the period commencing 1970 to date has annually published the listing Crown Radio Corporation as follows: "Crown Radio Corp., 147 W. 46th St. --- 586-0590." Annexed hereto and designated as Exhibits "8" and "9" respectively are the pages of the Manhattan Telephone Directory indicating such listing for the years 1972-1973 and 1973-1974.

22. In the assumption that the warranties, representations, and agreements made by Crown (Japan) with the plaintiffs were true, your deponent instructed Daniel Rosen, Esq., New York counsel for the plaintiffs, to institute an action against Crown Radio Corporation. The original complaint in this action was then served at the address indicated by Mr. N. Miyabayashi of Crown (Japan) as the New York office of Crown (Japan)

and in accordance with the telephone listing annexed hereto as 107a
exhibits. The said defendant then moved to dismiss the action
on the ground that service of process was insufficient. In the
accompanying Affidavits in support of the said motion, your
deponent then learned for the first time that the defendant was
contending that its subsidiary Crown (New York) was located in
San Francisco and that Crown (New York) was making sales to Mr.
Ellis Rosen who contended that he was a manufacturers represen-
tative for Crown (New York), which he referred to in his Affidavit
as "Crown San Francisco."

23. Based upon that service of process,
Judge Motley made her determination granting the motion.

24. Your deponent after having been advised
by New York counsel of the position taken by Crown (Japan), then
ordered counsel to commence another action against Crown (Japan)
and Crown (New York) based upon the defendant's explanations of
their corporate set-up. However, your deponent respectfully
submits that this Court must be mindful of the fact that at all
times Crown (Japan) represented its wholly-dominated and controlled
subsidiary, Crown (Japan), to be its agent.

25. The Affidavit of T. Uchiyama, an officer
of Crown (Japan), in support of the motion states in a sworn
statement in Paragraph "6" thereof:

"Furthermore, Crown (Japan) does
not pay for or prepare promotional
and advertising materials used by
Crown (New York) in the United States."

Annexed hereto is Exhibit "10" which is one of a number of
different types of brochures prepared and printed by Crown (Japan)
at its expense for Crown (New York) and which indicates thereon

the office of Crown Radio Corporation in San Francisco. The attention of this Court is respectfully called to the cover of this brochure which indicates on the face thereof "Crown Japan" and on the back cover "Printed in Japan."

26. In "AUDIO TIMES", the official trade publication for the audio industry, there appears an article given in an interview by an officer of Crown (Japan) indicating that it "does not plan to close its U. S. office." The interview further proceeds with the statement "and to maintain existing service stations throughout the U. S. to offer warranty service for our customers." Annexed hereto and designated as Exhibit "11" is the foregoing articles to which reference has been made.

27. It is significant that this interview was given by Crown (Japan) at its San Francisco office, and said office being the office which it represented to be its office and that of its agent, Crown (New York).

28. Your deponent has not urged any of the legal aspects as to the question of jurisdiction since that it is referred to in the Affidavit of plaintiffs' counsel, Daniel Rosen, Esq., annexed hereto as an affidavit in opposition to the instant motion and in the plaintiffs' memorandum of law. However, based upon the allegations of the second complaint, the factual evidence sworn to herewith, the statements made by representatives of Crown (Japan) and Crown (New York) to your deponent and to other officers of the plaintiffs, it is clearly indicated that Crown (Japan) has been doing business in the State of New York through its agent and wholly-controlled and dominated subsidiary, Crown (New York), in complete derogation

of its agreements with plaintiffs, that defendants have been guilty of perpetrating a fraud upon the plaintiffs, have breached their warranties made with plaintiffs, and now seek to enlist the aid of this Court in furthering their wrong-doing.

29. Proper and sufficient service is admitted by the defendants herein, and your deponent respectfully submits that this Court has jurisdiction over Crown (Japan) by virtue of its business activities in this state conducted by it, directly and indirectly, through its agent.

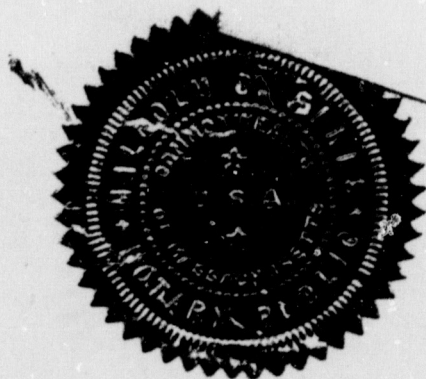
WHEREFORE, it is respectfully requested that the motion of the defendant, Crown (Japan) be denied in its entirety.

David Housman
DAVID HOUSMAN

SWORN TO BEFORE ME, THIS
3rd DAY OF MAY, 1974.

Malcolm D. Smith
NOTARY PUBLIC

MY COMMISSION EXPIRES: NOV. 26, 1976



AFFIDAVIT OF JOHN S. DEMETRICK IN OPPOSITION TO MOTION 110a
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x
AUTOMATIC RADIO MFG. CO., INC. and :
MERIT INTERNATIONAL CORP., :
Plaintiffs, :
-against- : '2 CIV. 864
CROWN RADIO CORPORATION, (JAPAN) : AFFIDAVIT
and CROWN RADIO CORPORATION (NEW YORK) :
Defendants. :
----- x

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, May 3, 1974

JOHN S. DEMETRICK, being duly sworn, deposes and says:

1. I am the Vice President in charge of engineering for the plaintiff, Automatic Radio Mfg. Co., Inc.
2. I have read the Affidavit of David Housman and do attest that all of the facts set forth therein are true in every detail. I accompanied Messrs. David Housman and Frank Housman on their visits to Crown (Japan) and the statements and representations made to them were made in my presence in exactly the manner set forth in the Affidavit of David Housman. I, therefore, do hereby corroborate in every detail all of these statements contained in said Affidavit and ask that they be deemed to be the same statements that I would have made under oath were I to have submitted an Affidavit at length.

WHEREFORE, it is respectfully requested that the motion of the defendant, Crown (Japan) be denied in its entirety.

John S. Demetrick
JOHN S. DEMETRICK

SWORN TO BEFORE ME, THIS

3rd DAY OF MAY, 1974.

William D. Quinn
WILLIAM D. QUINN

MY COMMISSION EXPIRES: NOV. 26, 1976

AFFIDAVIT OF FRANK M. HOUSMAN IN OPPOSITION TO MOTION
UNITED STATES DISTRICT COURT

111a

SOUTHERN DISTRICT OF NEW YORK

----- x
AUTOMATIC RADIO MFG. CO., INC. and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION (JAPAN)
and CROWN RADIO CORPORATION (NEW YORK)

Defendants.
----- x

NY CIV. 4864
AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Boston, May 3, 1974

FRANK M. HOUSMAN, being duly sworn, deposes and says:

1. I am the President of Merit International Corp.,
one of the plaintiffs in this action, and respectfully submit
this Affidavit in opposition to the motion of the defendant,
Crown (Japan).

2. I have read the foregoing Affidavit of David
Housman and know of my own knowledge from personal conferences
and telephone communications had with the representatives of
Crown (Japan) that all of the facts set forth in the Affidavit
of David Housman are true in each and every detail, and I do here-
by corroborate each of the statements made therein with the same
force and effect as if they were identically set forth in this,
my Affidavit.

WHEREFORE, it is respectfully requested that the
motion of the defendant, Crown (Japan) be denied in its entirety.

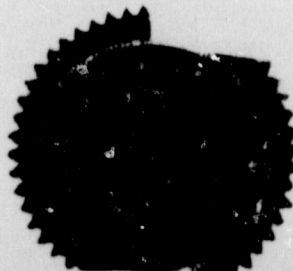
Frank M. Housman
FRANK M. HOUSMAN

SWORN TO BEFORE ME, THIS

3rd DAY OF MAY, 1974.

Notary Public
NOTARY PUBLIC

MY COMMISSION EXPIRES: NOV. 26, 1976



AFFIDAVIT OF DANIEL ROSEN IN OPPOSITION TO MOTION 112a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUTOMATIC RADIO MFG. CO., and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

72 CIV. 4864

against

CROWN RADIO CORPORATION (JAPAN) and
CROWN RADIO CORPORATION (NEW YORK)

AFFIDAVIT
IN
OPPOSITION

Defendants.

STATE OF NEW YORK, COUNTY OF NEW YORK.

DANIEL ROSEN, being duly sworn, deposes and says:

1. I am the attorney for Automatic Radio Mfg. Co. and Merit International Corp., the plaintiffs in the above entitled action, and fully familiar with the transactions had between Automatic Radio Mfg. Co., Merit International Corp., and Crown Radio Corporation (Japan), and respectfully submit this affidavit in opposition to the motion of the defendant Crown Radio Corporation (Japan), for an Order pursuant to Rule 12 (b) (2) of the Federal Rules of Procedure dismissing the above entitled action as against the said defendant Crown Radio Corporation (Japan) upon the alleged ground that this Court lacks jurisdiction over the person of said defendant and upon the further ground that a prior adjudication of this Court that it lacks in personam jurisdiction over defendant is res judicata.

2. Annexed to the moving papers of the defendant is a copy of the original complaint filed in this Court against Crown Radio Corporation. That complaint bears docket number 71 Civ. 257.

3. In or about March of 1971, an action was commenced by the plaintiffs herein against defendant named "Crown Radio Corporation". This action was commenced in the United States District Court, for the Southern District of New York and was filed

4. The summons and complaint in the action hereinabove referred to was served by the United States Marshal upon a Mr. Ellis G. Rosen, at 147 West 46th Street, New York, New York.

5. At the time of service the building directory at that address indicated said address to be the office of Crown Radio Corporation. The Manhattan telephone directory listed Crown Radio Corporation at said address, and there appeared the name "Crown Radio Corporation" upon the door of the office. At the time of service, Mr. Rosen identified himself to the United States Marshal as an officer of Crown Radio Corporation.

6. Thereafter, a motion was made by the defendant named in that action to dismiss for an Order pursuant to Rule 12 (b) (2) and 5 of the Federal Rules of Civil Procedure dismissing the action upon the dual grounds that the Court lacked jurisdiction over the person of the defendant and that service of process upon Ellis G. Rosen was insufficient.

7. In the affidavits in support of said motion, the moving party contended that in actuality there are two corporations bearing the name "Crown Radio Corporation". The vice-president and treasurer of one Crown Radio Corporation contended that it was a New York corporation having its base of operations in San Francisco, California, and referred to it as Crown Radio Corporation (hereinafter "Crown San Francisco"). In addition, the moving party contended that Crown Radio Corporation to which reference was made in the complaint was a Japanese corporation and referred to it as Crown Radio Corporation (Japan).

8. Although the supporting papers of the moving party admitted that Crown Radio Corporation (Japan) owns an excess of 75% of the stock of Crown Radio Corporation (San Francisco) and has in common at least two officers and one director, the moving

party nevertheless contended there was no relationship or exercise of dominion and control by Crown Radio Corporation (Japan) over Crown Radio Corporation (San Francisco).

9. In addition to the foregoing admissions, it was admitted that Ellis G. Rosen did represent Crown Radio Corporation (San Francisco) in the sale of products manufactured by Crown Radio Corporation (Japan) for its subsidiary Crown Radio Corporation (San Francisco) for sale throughout the United States including the New York City area.

10. Despite the fact that the affidavits submitted by the plaintiff in opposition to said motion indicated dominion and control over its subsidiary, Crown Radio Corporation (San Francisco) by Crown Radio Corporation (Japan), the motion to dismiss was granted by Judge Motley, approximately fourteen months after argument was heard upon the motion, who stated in effect that the service upon Mr. Ellis G. Rosen was not sufficient service of process in the action.

11. As appears from the foregoing affidavit of David Housman, Chairman of the Board of Directors of Automatic Radio, service was made at a New York City address listed for Crown (New York), not only in the building directory, and the office door, but which was also listed as the address in the Manhattan Telephone Directory. Service was made by the U.S. Marshal upon Mr. Ellis G. Rosen as aforesaid, relying upon the statements and representations made by representatives of Crown (Japan) to officers and representatives of the plaintiffs.

12. It was not until the affidavits in support of the first motion made by Crown Radio Corporation to quash service of process, that plaintiffs learned that the statements and representations made to plaintiffs' representatives by the representatives

of Crown (Japan), were false.

13. In reliance upon some of the sworn statements made in the supporting affidavits of the first motion, the plaintiffs were now made aware that the warranties and representations and agreements made by the representatives of Crown (Japan) to the plaintiffs were false and fraudulent. Accordingly, the plaintiffs then caused a second complaint to be drawn in the action, a copy of which is annexed hereto as Exhibit "1" and served Crown (New York), a New York corporation allegedly having its principal office in San Francisco, through the Secretary of the State of New York. This service of process is concededly sufficient since the instant motion to dismiss is made solely on behalf of the defendant Crown (Japan).

14. Simultaneously with the service of process upon Crown (New York) through the Secretary of the State of New York, English and Japanese translations of the second summons and complaint in the action was served upon the defendant Crown (Japan), in Japan, by the Ministry of Foreign Affairs of Japan, in accordance with the Geneva Treaty of 1965 providing for service of process between a United States National and a Japanese National. It is also conceded by the moving party that the service of the second complaint in this action upon Crown (Japan) is good and sufficient service.

15. The defendant Crown (Japan) now seeks to dismiss this second complaint upon the grounds that a prior adjudication of this Court that it lacks in personam jurisdiction over defendant is res judicata. With respect to that ground, your deponent submits that in the first complaint only one defendant was named,

to wit, Crown Radio Corporation. The reason for Crown Radio Corporation being named as the sole defendant was because your deponent had been misled by virtue of the fact that Crown (Japan) had always listed on its stationery, brochures, and advertising matter, that it maintained offices in New York. It was not until the first motion was made and your deponent saw the affidavits submitted in support of the motion that your deponent was made aware that Crown (Japan) and Crown (New York) were alleging that Crown Radio Corporation located in New York City was a factory representative for Crown (New York).

16. The decision made by Judge Motley on the first motion was based upon the service of process upon Mr. Ellis G. Rosen in the New York office. However, service of process has now been properly made on both defendants as conceded by both defendants in the instant motion. We are therefore confronted by the claim of Crown (Japan) in this instant motion that the decision of Judge Motley is now res judicata as to Crown (Japan).

17. It is respectfully submitted that the denial of a motion to dismiss a complaint for a lack of jurisdiction over defendant's person or the grant of such a motion that does not dispose of the entire action is not a final adjudication and generally is not appealable. Nor does the grant of a Rule 12 (b) (2) motion prejudice plaintiffs' right to file another complaint in the expectation that the Court will be able to obtain jurisdiction. Furthermore, even in the case where such motion has been denied under Rule 12 (b) (2), the party who has unsuccessfully raised an objection thereunder, may proceed to trial on the merits without waiving the challenge.

18. As to the question of lack of jurisdiction over the

person, it is quite apparent from the warranties and representations and the agreements made to plaintiffs by the representatives of Crown (Japan), that it owned and controlled Crown (New York), now located in San Francisco but which has a representative in New York.

19. In support of the instant motion, T. Uchiyama, the General Manager of Crown (Japan) states that Crown (Japan) owns most of the stock of Crown (New York). In addition, an affidavit submitted on the first motion by Kazunaka Uesugi, Vice-President and Treasurer of Crown (New York) conceded that ~~they have some~~ officers and directors common to both Crown (Japan) and Crown (New York).

However, since Crown (Japan) controls the voting stock of Crown (New York), it controls all of the directors and all of the officers of Crown (New York), who are all removable at the whim and fancy of Crown (Japan).

20. Of the utmost significance is the fact that Crown (New York) is restricted by Crown (Japan) to the sale of products manufactured by Crown (Japan) exclusively; and since these products have been sold in the State of New York by the alter ego of Crown (Japan), to wit, Crown (New York), in breach of the agreement made with the plaintiffs by Crown (Japan), and since this conduct on the part of both defendants has resulted in tortious conduct within the State of New York this Court does have jurisdiction over the defendant Crown (Japan).

21. It is further respectfully submitted that under the procedure followed by the plaintiff in the serving of the first complaint upon Crown Radio Corporation in New York City, where no designation was made between Crown (Japan) and Crown (New York),

such service of process is now distinguished by proper service upon Crown (Japan) and its alter ego Crown (New York), particularly since the second complaint filed in this action clearly indicates the commission of a breach of agreement and fraud by both defendants by the sale of the products by said defendants through their factory representative in New York, and which products were restricted by the agreement between plaintiffs and defendants.

22. For the purposes of this motion, the complaint and the statements contained in the opposing affidavits must be assumed to be true and the causes of action must stand if in any aspect upon the facts stated, the plaintiffs would be entitled to a recovery.

23. There are many sharp issues of fact with respect to the warranties, representations, tortious conduct of the defendants and the other causes stated in the second complaint, which are triable issues of fact necessary to determine jurisdiction over the person of the defendant Crown (Japan), and the law is well settled that even a party who has unsuccessfully raised an objection under Rule 12 (b) (2) may proceed to trial on the merits without waiving the challenge. Special appearances are no longer in any case, Rule 12 having abolished the age-old distinction between general and special appearances. A denial of the motion does not waive the objection of lack of jurisdiction over the person.

24. The affidavit of the attorney for Crown (Japan), submitted in support of the motion, recognizes that §302 of the New York CPLR ("Long Arm Statute") is available as a jurisdictional predicate to plaintiffs. Your deponent is whole-heartedly in accord with that statement. Inasmuch as the wrong person

was ostensibly served with the first complaint, there was no need to invoke the benefits to plaintiffs of §302 CPLR. However, since plaintiffs in their complaint and in the affidavits in opposition to the instant motion have clearly shown that the activities of Crown (Japan) and its alter ego, agent and subsidiary under its dominion and control clearly come within the provisions of §302 CPLR, this section is now urged as a basis for this Court having jurisdiction over the person of Crown (Japan) by the activities of its alter ego and agent Crown (New York).

25. The exhibits annexed to these affidavits in opposition to the instant motion clearly indicate that Crown (Japan) has conducted business through its agent Crown (New York) in this jurisdiction, has committed a tortious act both in this jurisdiction and without the State in which damages and other consequences were suffered by the plaintiffs.

WHEREFORE, in view of all of the foregoing, it is respectfully submitted that the motion of the defendant Crown (Japan) should in all respects be denied, or in the alternative, that this Court afford the plaintiffs such other and further relief as to this Court may seem proper, even to the extent of denying said motion without prejudice to the plaintiffs to renew same after a trial of the issues of fact raised by the affidavits in opposition and the complaint in the action.

DANIEL ROSEN

Sworn to before me this

8th day of May, 1974.

MARVIN R. JAVITS
Notary Public State of New York
No. 24-196883

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT OF DAVID HOUSMAN

120a

EXHIBIT 1 - COMPLAINT

(Printed herein at page 87a)

Aug. F. 123 W. 1000
11. 12. 123 W. 1000

121a

CROWN RADIO CORPORATION: 17-4, 3-CHOME, UENO, TAITO-KU, TOKYO

Messrs. Automatic Radio
Melrose, Mass, U.S.A.

Attention: Mr. David Housman, President.

Dear Mr. Houseman,

We, both, would like to express our sincere thanks to you for your kind hospitality given to us while we were there.

In spite of our visit to your office was so short, we were very much impressed of your excellent facility and vivid operation of your traditional enterprise, indeed.

Hence, we are sure that we are on a definite decision to co-operate with your esteemed company with our possible effort so far. We, therefore, would like to ask your further favourable and continuous co-operation with us in future, too.

again and hope to see you in Tokyo at the soonest opportunity. Also, please be kind enough to expand our much gratitude to Frank Houseman at the same time.

With very best personal regards,

Very truly yours,

CROWN RADIO CORPORATION

Shigeharu Saitama
President

Ryoichi Fujii
Director

S.S./m.k.

CROWN

EXHIBIT 3 - LETTER FROM CROWN RADIO (JAPAN) 122
TO DAVID HOUSMAN DATED DECEMBER 3, 1969

CROWN RADIO CORPORATION: 17-4, 3-CHOME, UENO, TAITO-KU, TOKYO

Tokyo, December 3rd, 1969

Mr. David Houseman, Chairman
Board of Directors
Automatic Radio Mfg. Co., Inc.
Melrose, Massachusetts 02176

Dear Mr. Houseman,

Re: Labor Strike

First of all, I would like to express my sincere gratitude for your valuable patronage for our products extended to us at all the time.

I presume that you are working hard in good health for the present biggest sales season, and I myself am also doing my best to cope with all the requirement incoming both abroad and domestic.

Now, I would like to explain to you about the situation of the Labor Strikes here. Generally speaking, most of the unions show the strongest attitude than ever in order to get higher year-end bonuses.

In case of our company, union has rushed into the strike since Nov. 29th inspite of our continued effort to have an early settlement to our mutual advantage.


Every day and night our executives and directors, including myself, have tried their best to have the satisfactory conclusion, however, it is my regret to predict that the Union will continue the strike upto 10 days or so.

Under these circumstances, I should appreciate it very much if you would kindly forgive us of the possible delay of your merchandise, details of which will be informed to you as soon as the subject matter are completed.

Last but not the least, we are no less sorry for the inconveniences you have been put to, however, situation is as above, we trust that we shall be favoured with your valuable cooperation taking the situation into your kind consideration.

Yours very truly,

CROWN RADIO CORPORATION


S. Sakuma, President

c.c. Mr. John F. Lohr, Executive Director
Merit International Corp.

CROWN RADIO CORPORATION: 17-4, 3-CHOME, UENO, TAITO-KU, TOKYO

Tokyo, October 5, 1970

Mr. David Housman
Chairman of the board
Automatic Radio Manufacturing Co., Inc.
Melrose, Massachusetts 02176
U.S.A.

Dear Mr. Housman:


This is to confirm our telex despatched to you on October 2nd as follows:

"RECEIVED YOUR TELEX OF 9/26 AND 9/30

- 1) WE MAY NOT ACCEPT YOUR EXPARTE REQUEST THAT WE HAVE TO TAKE BACK CHX MERCHANDISE OR REBATE USD 10 AS COMPENSATION
- 2) WE MAY NOT ADMIT YOUR INSISTENCE THAT WE HAVE BREACHED THE EXCLUSIVITY AGREEMENT
- 3) YOUR REQUEST ARE PRESUMABLY FROM DULL MARKET AND/OR LACK OF SALES PROMOTION ON YOUR PART WHICH HAVE LED TO UNEXPECTED POOR SALES OF CHX
- 4) DISCUSSION FOR REPUTABLE SETTLEMENT OF THE MATTER BEING STILL CONTINUED WITH S.F. WISH TO INFORM YOU UPON REACHING SOLUTION, ANY FURTHER NEGOTIATION FOR ANY OTHER WAY OF AMICABLE SETTLEMENT IS GLAD TO BE DISCUSSED
- 5) YOUR PROMPT PAYMENT FOR CHX E MODEL IS REQUESTED AS IT HAS ENTIRELY NOTHING TO DO WITH THE ABOVE MATTER AT ISSUE"

Very truly yours,

CROWN RADIO CORPORATION


G. Imai, Manager
International Sales Dept.

GI/im/aa

c.c. Mr. Frank Housman, President of Merit International Corp.
Mr. Elliot J Englander, Corporate Counsel
Merit International Corp., Tokyo Office

CROWN RADIO CORPORATION: 17-4, 3-CHOME, UENO, TAITO-KU, TOKYO

Tokyo, October 13, 1970

Mr. Elliot J. Englander
Corporate Counsel
Automatic Radio Manufacturing Co., Inc.
Melrose, Massachusetts 02176
U. S. A.

Dear Mr. Englander:

This is to confirm our telex despatched to you on
October 7th as follows:

"ACKNOWLEDGED YOUR TELEX OF 10/6/70. IN THE MEANTIME
WE UNDERSTOOD THAT YOUR MR. DAVID HOUSMAN TALKED WITH
OUR MR. MIYABAYASHI IN SAN FRANCISCO AND MR. HOUSMAN
HAS MADE SEVERAL PROPOSALS TO HIM TO AVOID LEGAL STEPS
TO THE MUTUAL BENEFIT OF AUTOMATIC RADIO AND CROWN.

THEREFORE WE ARE NOW ATTEMPTING TO RESPONSE TO MR.
HOUSMAN THROUGH OUR MR. MIYABAYASHI WITHIN A FEW DAYS
FOR WHICH PLEASE UNDERSTAND."

Very truly yours,

CROWN RADIO CORPORATION



G. Imai, Manager
International Sales Dept.

GI/ia/aa

c.c. • Mr. David Housman, Chairman of the board
 • Mr. Frank Housman, President of Merit International Corp.
 • Merit International Corp., Tokyo Office.

✓ OVERSEAS OFFICES: NEW YORK, SAN FRANCISCO, PANAMA, COLON, DÜSSELDORF, LONDON

Manufacturers of world famous CROWN transistor products

MERIT

EXHIBIT 6 - PURCHASE ORDER DATED MAY 15, 1969 125a

International Corp.

(AREA CODE 617)
322-2781

CABLE ADDRESS:
MERIT-BOSTON



EXPORTERS AND IMPORTERS

40 GOODYEAR AVENUE
MELROSE, MASSACHUSETTS 02176
U. S. A.

THIS ORDER NUMBER MUST APPEAR ON ALL
PACKING SLIPS, PACKAGES AND INVOICES.

PURCHASE ORDER

NO. 69-5051

DATE MAY 15, 1969

SHIP TO ↓

1132 MAIN ST.
MALDEN, MASS. 02148

TO MERIT INTERNATIONAL CORP.
FUJI BUILDING
NO. 7-4, 3-CHOME, KASUMIGASEKI
CHIYODA-KU, TOKYO, JAPAN

VIA SEA OR SEA/RAIL		FOB/CIF F. O. B.	TERMS/L/C NO L/C	DELIVERY REQUIRED SEE BELOW	
QUANTITY	PART NUMBER	DESCRIPTION		PRICE	AMOUNT
10,000	CHX-9912	AM/FM/MPX CASSETTE RECORDER PLAYER. COMPLETE W/BLANK CASSETTE 2 MICROPHONES W/STANDS, PATCH CORDS TO BE UL AND CSA STYLE DELIVERY: SEPT. 1300 DEC. 2000 OCT. 2000 JAN. 2000 NOV. 2000 FEB. 700 SPARE PARTS MUST BE SHIPPED WITH INITIAL SHIPMENT This model is for the exclusive and permanent use for Automatic Radio only. No similar and/or associated model shall be offered to other persons or companies without the express written consent of Automatic Radio. CONFIRMATION MIC/T #3505 <i>rev MIC/T tel 9/25</i> <i>674 How date</i> <i>24-13 are 9/26</i> <i>12-T</i> <i>Production completion date</i> <i>860 9/20</i> <i>700 10/4</i> <i>500 10/15</i> <i>200 10/24</i> <i>300 10/26</i> <i>200 10/31</i>		\$56.22	\$562,200.00

X-factory
Net. \$57.00

Describe PR 14th 1969
PR 70911 4-8

MERIT*International Corp.***EXPORTERS AND IMPORTERS**

~~ROSEI BLDG.~~
~~4, 1-CHOME, NIGASHI-AZABU~~
~~MINATO-KU, TOKYO~~
~~TEL: 583-8118-8~~
~~TELEX NO. TK4441~~

~~FUJI BLDG., 1-4, 3CHOME, KASHIMIGASEKI,~~
~~CHIYODA-KU, TOKYO, JAPAN.~~

SUPERSEDE OF P/O #03467

PURCHASE ORDER NO 03505

TO Crown Radio Corp.
 17-4, 3-chome, Ueno
 Daito-ku, Tokyo

Date May 8, 1969

Ship To Will Pick up

IF VIA	L C NO.	DELIVERY REQUIRED
	To be advised	EX-Factory See below

QUANTITY	DESCRIPTION	PRICE	AMOUNT
10,000	AM/FM/MPX CASSETTE RECORDER/ PLAYER. Complete with blank Cassette, 2 microphones w/stands patch cords to be U.L. and CSA style. Model #CHX-9912 <u>Delivery required</u> Sept. 1,300 Dec. 2,000 Oct. 2,000 Jan. 2,000 Nov. 2,000 Feb. 700	#20,239 <i>56 20</i>	#202,390,000

This model is for the exclusive and permanent use for Automatic Radio only. No similar and/or associated model shall be offered to other persons or companies without the express written consent of Automatic Radio.

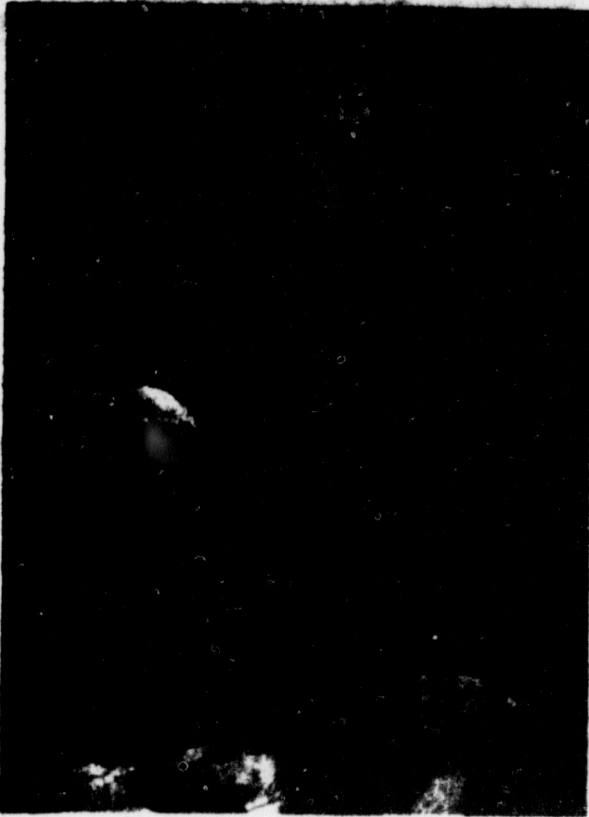
SPARE PARTS MUST BE SHIPPED
WITH INITIAL SHIPMENT

MERIT INTERNATIONAL CORP.

John P. Lohr
 John P. Lohr
 Executive Director

PURCHASE ORDER NO. 68-5521 MUST APPEAR ON ALL CORRESPONDENCE
 INVOICES, PACKAGES AND SHIPPING PAPERS.

dry 34 032	230	230
E-08	230	230
419 Park Ave S	230	230
343	230	230
P 147 064	230	230
2 Rutten	230	230
Manu	230	230
RAY INC 180W15	230	230
the	230	230
P. 300 Saw	230	230
way	230	230
Ar	230	230
c. 600 Lp.	230	230
cc 2792 Shuy	230	230
b1 Emerald-Hill Hggn	230	230
RAY INC 180W15	230	230
Shuy	230	230
734	230	230
00 Water	230	230
6 Acacia-Dr	230	230
627 Shuy	230	230
2 Lke	230	230
9 225 Ldys	230	230
Acacia-Dr	230	230
1800 Ldys	230	230



SEE YOUR DEALER TODAY



CROWN RADIO CORPORATION

JAPAN

28 E. Harris Avenue, South San Francisco, Industrial Park, Calif. 94080

tel: 873-1640

Printed in Japan



ONLY COPY AVAILABLE

audio times

THE INDUSTRY'S ONLY NEWSPAPER

VOL. 14, NO. 10

5.00 PER YEAR

May 15, 1972

Scores In Chicago

The Institute of High Fidelity (IHF) took a full stride with its new program during its show at the Marriott Hotel near O'Hare Airport. The total attendance of 1,500 were ready to dis-

"A winner by all counts," enthused IHF vice president Herb Horowitz. "This was the best attended regional show we've had to date. It was a credit to the industry. Most particularly to the reps and dealers who participated in making the show a hit."

IHF proxy Walt Goodman and executive secretary Gertrude Murphy headed off the crowd, telling the attendance that some new records were being broken.

While dealer after dealer was being



John Frankenger, Gertrude Murphy and Arthur Chicago Show.

Many small and large area retailers had hospitality rooms and suites to secure immediate prospects who were turned on by exhibits at the show.

(Continued on page 19)

OSTS US REPS IN ENGLAND

M. I. BSR re fact... for ed S... key fa... executives group... headed by ating chief John Holm were national sales Woods and OEM vp S

the purpose of the

visit, Hollands explained. "We've done a pretty remarkable job in the United States in a rather short space of time. In fact, US sales account for almost two of BSR's very substantial international sales volume. We wanted to thank our reps for the tremendous job they've done by providing a trip to England. More important... because we're still

(Continued on page 8)



John Ferguson left discusses CES plans with US chief John... recent BSR factory tour for US reps.



New... marketing director M. Mar...

4 Channel Race Heats

ACAPULCO, MEXICO - Development of the discrete four-channel disc by RCA Records is the key to a "total unified audio system," according to Keiichi ("Tex") Takeoka, managing director of Matsushita Electric Industrial Co., Ltd. and head of its Radio Stereo Division.

"If we are to serve the consumer, we must talk not of a part, but of the sum total of the parts," Takeoka said in an address here before the annual International Music Industry Conference (IMIC).

Discrete four-channel is already the accepted standard for tape reproduction. A discrete four-channel disc is now a reality. And with the discrete four-channel FM broadcast techniques recently developed, completed compatible audio playback is now possible as well.

"Panasonic believes these technical breakthroughs mean that none of us has to settle for the synthetic any longer."

By "synthetic," Takeoka explained that he meant the matrix systems presently on the market which he described as an "intermediate technology designed to stimulate four-channel sound on disc until the real thing came along."

(Continued on page 4)

NEW YORK - While RCA, JVC and Panasonic were demonstrating their four-channel discrete disc to record industry execs at the International Music Industry Conference in Acapulco, CBS Columbia was busy here announcing new licensees of its SQ matrix system.

New SQ adherents include Morse Electro Products, Superscope and the European-based Connaught group. Other SQ licensees include Aiwa, Emerson, Harman-Kardon, Instructek, Kenwood, Lafayette Radio, Major Electronics, Masterwork, Merritt, Pacific Electronics, Pilot, Pioneer, Radio Shack, Sanyo, Sony, Soundsign and Tele-Tape.

CROWN DEFINES FUTURE PLANS

S. SAN FRANCISCO, CALIF. - As reported May 1 in these pages, Crown Radio Corp. (Japan) will phase out the national distribution of its consumer electronic products May 31. However, it was learned that Crown does not plan to close its US office. Henceforth, the firm will concentrate

(Continued on page 13)

ONLY COPY AVAILABLE

Schaak Reports Record Profits

MINNEAPOLIS, MINN. — Schaak Electronics, a retail audio chain based here, in the nine-month period ending February 29, reported record sales volume and total profits.

Schaak president Richard Schaak stated in a report to shareholders, "In nine months we have exceeded last year's entire sales volume by five per cent and total profit by 31 per cent."

According to the report, compared to last year's first nine months, Schaak sales were up 43 per cent to \$3,164,600 and net income up 77 per cent to \$131,000, reflecting stronger profit margins as the company expanded its sales base. Earnings per share increased 41 per cent despite a substantially greater number of shares outstanding.

Schaak also announced the location of a new sales center in Blaine, Minn. This center, along with stores in the Northridge and Southridge shopping centers in Milwaukee, and one in the Woodfield Shopping center in Schaumburg, Illinois, will bring the total of Schaak stores to 13.

Schaak indicated in his report that

... has a full 12 months' experience with the initial transition.

The distributor sales division of Schaak Electronics, according to the report, has just recently been appointed distributor for 3M magnetic tapes and Panasonic radio, television and tape recorder accessories. "These appointments," said Schaak, "are part of our continuing effort to round out and bolster our distributor sales division."

Negotiations for additional warehouse, service and office facilities have just been completed, according to the report. The buildings being leased add to the present warehouse and will double the available space for warehouse and triple space available for service. A unique feature of the arrangement, as described by Schaak, is that no rent will be required until the space is needed.

The strong pattern established in the first three quarters will continue according to Schaak, and will result in a highly successful year.

Crown...

(Continued from page 1)

... efforts in the specialized field of office and communications equipment such as telephone answering devices, dictating machines and electronic cal-

culators.

Karl Uesugi, vice president and general manager, noted that Crown Radio (Japan) home electronic products would continue to be available in the US on a contract, minimum-order basis to major retail operations carrying such products for exclusive marketing under their own, or the Crown Radio (Japan) brand name in

their trading areas.

Uesugi told AUDIO TIMES the change in marketing direction was necessitated by the recent international monetary instability and by increasing competition in consumer electronic products. He added that Crown Radio's new management in Tokyo "approves and supports this new office equipment program."

Sales manager Leo Ikeda noted, "We shall continue to provide service on all of our products in the market and to maintain existing service stations throughout the US to offer warranty service for our customers."

The company will show new office equipment products at the Consumer Electronics Show and will reveal details of its contract plan at that time.

HIGHER THE WORLD'S ENTIRE SELECTION OF AUTOMATIC TURNTABLES WITH ZERO TRACKING ERROR

There they are. All the world's automatic turntables with zero tracking error.

Not that there haven't been attempts by other turntable makers. Many have tried. This is the first to succeed. And it has succeeded in the most important way. It has made the difference in the tracking error of a record player... it has made it actually zero.

It's all because of a simple but superbly engineered tone arm. An articulating auxiliary arm, with critically precise pivots, makes a continuous adjustment of the cartridge angle as it moves

from the outside groove toward the center of the record.

This keeps the stylus at a 90° tangent to the groove. Consequently tracking error is reduced to virtual zero. (Independent test labs have found the test instruments they use are incapable of measuring the tracking error of the Zero 100.) Theoretical calculations of the Zero 100's tracking error indicate that it is as low as 1/100 that of conventional turntables.

Zero tracking error means the most dramatic aspect of Zero 100, but it has other features of genuine value and significance. Variable speed control; illuminated strobe; magnetic anti-skating;

precision-designed, mating, 15° vertical tracking adjustment; the patented Curved Gyro-Lab synchronous motor; and exclusive two-point record support in automatic play.

... have done nothing to improve on the Zero 100. We believe they are worth trying. The test reports by independent review groups are convincing proof. We've prepared a special booklet available to you by 40¢ mail, along with the 10-page brochure on the Zero 100.

GARRARD ZERO 100

1970

tone arm and cartridge



ONLY COPY AVAILABLE

REPLY AFFIDAVIT OF DUGALD CAMPBELL BROWN
UNITED STATES DISTRICT COURT (FILED MAY 15, 1974)
SOUTHERN DISTRICT OF NEW YORK

1320

----- x
AUTOMATIC RADIO MFG. CO., INC.
and MERIT INTERNATIONAL CORP.,

Plaintiffs,

-against-

CROWN RADIO CORPORATION (JAPAN)
and CROWN RADIO CORPORATION (NEW
YORK)

Defendants.
----- x

72 Civ. 4864

REPLY AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

DUGALD CAMPBELL BROWN, being duly sworn, deposes and
says:

1. I am a member of the firm of Whitman & Ransom, attorneys
for the defendants. I make this affidavit in reply to the plaintiffs' opposing
affidavits and in support of the defendant's, Crown (Japan) motion to dismiss
the complaint as against it upon the ground of res judicata and lack of in
personam jurisdiction over it.

2. The opposing affidavits are essentially a rehash of the
material previously submitted to Judge Motley and are not addressed to the
issues before this Court on this motion. In any event, the claimed reliance
upon representations by representatives of Crown (Japan) that it would cause
Crown (New York) to observe the terms of the exclusivity clause in plaintiffs'
purchase order are of no avail by reason of the Statutes of Frauds.

ONLY COPY AVAILABLE

133a

3. The contentions based upon the article appearing in "Audio Times" are quite beside the point in that they wrongfully describe Mr. Uesugi, the gentleman quoted in the article, as an officer of Crown (Japan). In fact, Mr. Uesugi was at the time an officer of Crown (New York).

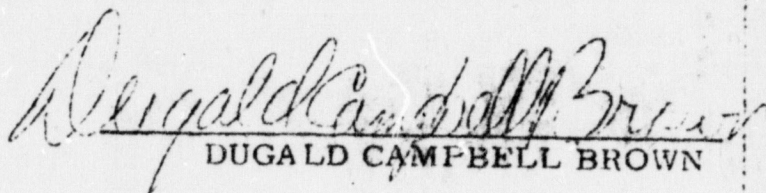
4. The contention in the opposing affidavits to the effect that Crown (New York) is the "wholly owned subsidiary" of the moving defendant and is "under its complete domination" rests solely upon assertions without any factual showing that these assertions are so. Moreover, Judge Motley expressly rejected this argument in that she stated the claim of plaintiff which was being denied to be as follows:

"Plaintiffs' claim is not that Rosen is the agent for Crown San Francisco which is, in turn, the agent for Crown but, rather, that Rosen is agent for Crown directly, and that both Crown San Francisco, and Rosen in New York are overseas offices of Crown."

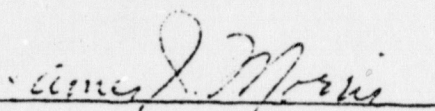
Consequently, this argument is no longer available to the plaintiffs.

5. The plaintiffs' argument that the instant motion should be denied and reserved for trial fails to come to grips with the prior history of this case. Judge Motley gave plaintiffs the opportunity to prove by discovery or otherwise jurisdictional facts prior to the entry of judgment dismissing the prior action. Plaintiffs chose not to avail themselves of this opportunity and they should not be permitted, to the prejudice of the moving defendant, to assert claims as to which there has previously been a knowing waiver.

WHEREFORE, I respectfully request that the moving defendant's motion to dismiss be granted in all respects.


DUGALD CAMPBELL BROWN

Sworn to before me this
15th day of May, 1974.



JAMES S. MORRIS
Notary Public, State of New York
No. 80-2777125 Qual. in Westchester Co.
Term Expires March 30, 1975

ENDORSEMENT OF ROBERT L. CARTER, U.S.D.J. (FILED JULY 2, 1974) i35a
AUTOMATIC RADIO MFG. CO. and MERIT INVESTMENT CORPORATION v. CROWN RADIO CORPORATION (JAPAN) and CROWN RADIO CORPORATION (NEW YORK)

72 C1v. 4864

ENDORSING

Defendant Crown Radio Corporation (Japan) moves for an order pursuant to Rule 12 (b)(2) of the Federal Rules of Civil Procedure dismissing the action for lack of in personam jurisdiction. The motion was first made returnable on December 28, 1973, and through a series of stipulated adjournments, the time for determination of the motion was deferred until April 18. Apparently the first stipulated adjournment was not recorded in the case file in chambers, and the court by endorsement disposed of the motion on January 31, 1974. That endorsement was subsequently recalled and withdrawn. Having now read plaintiff's answering papers and defendant's reply, I find no basis for altering the substance of the prior endorsement.

The motion is granted and the complaint is dismissed. The issue of in personam jurisdiction over defendant was thoroughly canvassed by this court (Motley, D.J.) in 71 Civ. 267, a case involving the same parties. In that case this court held that in personam jurisdiction had not been established in an opinion filed on April 28, 1972, and an order and judgment dismissing the complaint for lack of jurisdiction was filed on June 6, 1972. The matter is, therefore, res judicata. See Ripperger v. A.C. Allen & Co., 37 F. Supp. 373 (S.D.N.Y.), aff'd, 113 F. 2d 332 (2d Cir. 1940); Hodge v. Second Federal Savings And Loan Association of Boston, 409 F. 2d 1254, 1257 (1st Cir. 1969).

The present complaint and affidavits filed in opposition to the motion to dismiss are merely a rehash of what was brought before and considered by Judge Motley in the prior proceeding. Even assuming

ONLY COPY AVAILABLE

that Crown Radio Corporation (Japan) when it negotiated with plaintiffs in Japan knew that the alleged breach of contract would have repercussions in the United States, see Leasco Data Processing Corp. v. Maxwell, 468 F. 2d 1326 (2d Cir. 1972), there is nothing to show that it knew or had reason to know that those repercussions would occur in New York. Plaintiffs are domiciled in Massachusetts, and perhaps defendant should have known that its act would have effects in Massachusetts; while that might give jurisdiction to a Massachusetts court, it does not help plaintiff make a case for in personam jurisdiction in New York. That burden it has failed to meet. See Owen of Georgia Inc. v. Blitman, 462 F. 2d 603, 604 (5th Cir. 1972).

SO ORDERED.

Dated: New York, New York
July 1, 1974

Robert L. Carter

ROBERT L. CARTER
U.S.D.J.

ONLY COPY AVAILABLE

NOTICE OF ENTRY OF ENDORSEMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

137a

-----X

AUTOMATIC RADIO MFG. CO. and MERIT :
INT'L CORP., :

Plaintiffs, :

NOTICE OF ENTRY

-against-

CROWN RADIO CORP., et ano., :

72 Civ. 4864

Defendants. :

-----X

S I R :

PLEASE TAKE NOTICE that the within is a true copy of
an order made in the above entitled action and entered in the
office of the Clerk in the United States District Court,
Southern District of New York, on July 2, 1974.

Dated: New York, New York
July 3, 1974

Yours, etc.,

WHITMAN & RANSOM
Attorneys for Defendant
Crown Radio Corp. (Japan)
Office & P.O. Address
522 Fifth Avenue
New York, N.Y. 10036
(212) 575-5800

TO:

DANIEL ROSEN, ESQ.
Attorney for Plaintiffs
30 Broad Street
New York, N.Y. 10004

NOTICE OF APPEAL
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

138a

AUTOMATIC RADIO MFG. CO., INC., and
MERIT INTERNATIONAL CORP.,

Plaintiffs,

72 CIV. 4864

against

NOTICE OF APPEAL

CROWN RADIO CORPORATION (JAPAN) and
CROWN RADIO CORPORATION (NEW YORK),

Defendants.

NOTICE is hereby given that AUTOMATIC RADIO MFG. CO., INC., and MERIT INTERNATIONAL CORP., plaintiffs above named, hereby appeal to the United States Court of Appeals, for the Second Circuit, from the Order entered in the office of the Clerk of this Court on July 2, 1974 dismissing the complaint in this action.

Dated: July 17, 1974

DANIEL ROSEN

By 

MARVIN R. JAVITZ

Attorney for Plaintiffs
30 Broad Street
New York, New York 10004
(212) HA 2- 8456

TO: WHITMAN & RANSOM, ESQS.
Attorneys for Defendant
Crown Radio Corporation (Japan)
522 Fifth Avenue
New York, New York 10036

US COURT OF APPEALS: SECOND CIRCUITAUTOMATIC RADIO MFG, CO., INC., et al,
Plaintiff-Appellants,

against

CROWN RADIO, CORP., et al,
Defendants-Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele, being duly sworn,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th Street, New York, New York
That on the 11th day of December 1974 at 522 Fifth Ave., New York

deponent served the annexed

Appendix

upon

Whitman & Ransom

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 11th
day of December 1974

1974

Print name beneath signature

JAMES STEELE

Robert T. Brin
ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 6418650
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975